



The Mob attacking the Warehouse of Godfrey Gilman & Co. Alton Ill. on the Night of the 7th Nov. 1837.

ALTON TRIALS:

OF

WINTHROP S. GILMAN,

WHO WAS INDICTED WITH

ENOCH LONG, AMOS B. ROFF, GEORGE H. WALWORTH, GEORGE H.
WHITNEY, WILLIAM HARNED, JOHN S. NOBLE, JAMES MORSS, Jr.,
HENRY TANNER, ROYAL WELLER, REUBEN GERRY, and
THADDEUS B. HURLBUT;

FOR THE CRIME OF RIOT,

Committed on the night of the 7th of November, 1837, while engaged in defending a

PRINTING PRESS,

PROM AN ATTACK MADE ON IT AT THAT TIME, BY

AN ARMED MOB.

WRITTEN OUT FROM NOTES OF THE TRIAL, TAKEN AT THE TIME,

BY A MEMBER OF THE BAR OF THE ALTON MUNICIPAL COURT.

ALSO,

THE TRIAL OF

JOHN SOLOMON, LEVI PALMER, HORACE BEALL, JOSIAH
NUTTER, JACOB SMITH, DAVID BUTLER, WILLIAM
CARR, AND JAMES M. ROCK,

INDICTED WITH

JAMES JENNINGS, SOLOMON MORGAN, AND FREDERICK BRUCHY;

FOR A RIOT COMMITTED IN ALTON,

On the night of the 7th of November, 1837, in unlawfully and forcibly entering the
Warehouse of GODFREY, GILMAN & Co., and breaking up and destroying a

PRINTING PRESS.

WRITTEN OUT FROM NOTES TAKEN AT THE TIME OF TRIAL,

BY WILLIAM S. LINCOLN,

A Member of the Bar of the Alton Municipal Court.

NEW-YORK:

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TO THE PUBLIC.

There has rarely been an occurrence that has produced so deep and intense interest, throughout our whole country, as the disgraceful and murderous affair at Alton, Illinois, on the night of the 7th November last.

But the indictment of the *defenders*, and the trial of an *owner* of the warehouse, for the *crime of riot*, in attempting to protect his property from mob violence, together with the *singular* verdict of the Jury, in the case of those of the mob that were tried, has, if possible, increased the feeling, and created a great desire in the public mind, to know the facts in the case. The publication of these trials has been loudly called for through several public journals.

To gratify the public, and at the same time correct the contradictory reports that have been circulated, by giving the facts without comment, as they were drawn out in evidence, is deemed sufficient apology for spreading the "ALTON TRIALS" before the public.

THE PUBLISHER.

New-York, March 27, 1838.

ALTON TRIALS.

Municipal Court, City of Alton, } Hon. William Martin, Judge.
January Term, 1838.

People of the State of Illinois, }
vs. } INDICTMENT FOR RIOT.
Winthrop S. Gilman.

B. F. Murdock, City Sol'r.	} For Gov't.	G. T. M. Davis, Esq.,	} For Def'ts.
Samuel G. Bailey,		A. Cowles, Esq.,	
U. F. Liuder, Att'y Gen'l.		G. W. Chickering, Esq.,	

AT the opening of the Court on this the 16th day of January, 1838, the above case came on for trial. The Clerk proceeded to empanel a jury. The regular pannel having been exhausted, talesmen were returned by the Sheriff, and at last, after the names of thirty-four persons had been returned, a jury was obtained, sworn to try the issue, consisting of the following named individuals :—James S. Stone, Timothy Terrel, Stephen Griggs, Effingham Cock, George Alicorn, Peter Whittaker, Horace W. Buffum, Washington Libbey, Luther Johnson, George L. Ward, Anthony Olney, Jacob Rice. In constituting this Jury the Government and accused exercised each their prerogative of peremptory challenge to its full extent, and twelve individuals called to the jury box were set aside for incompetency, by reason of their having formed or expressed an opinion as to the guilt or innocence of the accused.

Upon the first calling of the case, W. S. Gilman, by his counsel, moved for a trial separate from the other individuals included with him in the indictment, alleging that it was grounded, as well upon his right to have a separate trial, as upon the fact, that it was necessary for his complete, full, and perfect justification :

that intent entered into the composition of the offence with which he was charged, and he could in no way so well as by a separate trial, show how utterly devoid he was of any criminal intent in the commissions of the acts for which he here stood indicted as a criminal. He urged, that if denied his application he might suffer injustice and wrong, inasmuch as the exercise by the individuals jointly indicted with him, of their separate rights to peremptory challenge, might conflict with the formation of a jury by which his acts were to be judged. "Having the right, I ask," said his counsel, "to be permitted its full exercise. I have the right, and I cite Dane's Abridgement to the point."

Per Curiam. The motion is granted, and thereupon a plea of Not Guilty, individually, nor jointly with the others named in the indictment, was entered.

Murdock, for Government, in opening.—The defendant is indicted for a violation of the 117th section of the criminal code of this State, which runs in these words: "If two or more persons actually do an unlawful act with force or violence against the person or property of another, with or without a common cause of quarrel, or even do a lawful act, in a violent and tumultuous manner, the persons so offending shall be deemed guilty of a Riot, and, on conviction, shall severally be fined not exceeding two hundred dollars, or imprisonment not exceeding six months."

The indictment is in these words: "Of the January Term of the Municipal Court of the City of Alton, in the year of our Lord one thousand eight hundred and thirty eight.

State of Illinois, City of Alton, ss.

The Grand Jurors chosen, selected, and sworn, in and for the body of the City of Alton, in the county of Madison, in the name and by the authority of the People of the State of Illinois, upon their oaths present, that Enoch Long, Amos B. Roff, George H. Walworth, George H. Whitney, William Harned, John S. Noble, James Morse, junior, Henry Tanner, Royal

Weller, Reuben Gerry, and Thaddeus B. Hurlbur', and Winthrop S. Gilman, all late of the City of Alton, in the county of Madison, and State of Illinois, on the seventh day of November, in the year of our Lord one thousand eight hundred thirty-seven, with force and arms, at the city of Alton aforesaid, and within the corporate limits of said city, unlawfully, riotously, and routously, and in a violent and tumultuous manner, resisted and opposed an attempt then and there being made to break up and destroy a printing press, then and there being found the goods and chattels of
contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the State of Illinois.

And the Jurors aforesaid, in the name and by the authority aforesaid, upon their oaths aforesaid, do further present, that Enoch Long, Amos B. Roff, George H. Walworth, George H. Whitney, William Harned, John S. Noble, James Morse, junior, Henry Tanner, Royal Weller, Reuben Gerry, Thaddeus B. Hurlburt, and Winthrop S. Gilman, all late of the city of Alton, in the county of Madison, and State of Illinois, on the seventh day of November, in the year of our Lord one thousand eight hundred and thirty-seven, with force and arms, at the city of Alton aforesaid, and within the corporate limits of said city, unlawfully, riotously, routously, and in a violent and tumultuous manner defended and resisted an attempt then and there being made by divers persons, to the jurors aforesaid unknown, to force open and enter the store-house of Benjamin Godfrey and Winthrop S. Gilman, there situate, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Illinois.

FRANCIS B. MURDOCK,
Prosecuting Attorney for the Municipal Court
of the City of Alton "

Endorsed upon the back 'A true bill.'

THOMAS G. HAWLEY, Foreman."

You perceive, Gentlemen of the Jury, that the indictment charges in each count a distinct offence. In the first it is alleged, that the defendant, with others, unlawfully, riotously, and in a violent and tumultuous manner, on the 7th day of November last, resisted and opposed an attempt made by divers persons to break up and destroy a printing press, then being the property of Benjamin Godfrey and Winthrop S. Gilman : and in the second count it is charged against the same individuals, that they in the same violent and tumultuous manner defended and resisted an attempt then and there being made by divers persons to break open and enter the storehouse of Godfrey & Gilman. The charge is for an unlawful defence of property—unlawful, because violently and tumultuously done. The defendants had a right to defend their property—every individual has. The offence consists in doing the act in a manner not sanctioned by law, but in direct violation of its letter and spirit. They assembled at the storehouse of Godfrey & Gilman, armed with muskets and rifles, with the acknowledged intent of using them in defence of property ; and they did use them. The assembly of such a body of men armed in this manner, and for the avowed purpose of defending property from destruction, was calculated greatly to excite the feelings of the community, and to lead to a breach of the peace.

The counsel for the defence will place their justification upon the principles of the Common Law of England, which recognises the right of every individual to defend his own house from a violent intrusion, and also to assemble his friends to aid him in its defence. This rule of law was established in a barbarous age, when man fought with man, and clan was arrayed against clan. Then, every man's house was his castle and protection, and men were justified in using more violent means in defence of their homes and their firesides, than in protection of other property. But, gentlemen, I take the broad ground, that the common law

of England, so far as it relates to crimes, has no force in the state of Illinois. This is the opinion of many of the ablest lawyers of the state. No one will say that an individual can be indicted at common law in our courts. We have a criminal code of our own, and unless the crime be defined and punished by statute, it is not an offence here. The first clause of the criminal code is in these words, "That the following shall, from and after the first day of July next, constitute the code of criminal jurisprudence of this State." The Legislature intended to establish a new system of criminal law. To define crimes, and fix their respective punishments. And when the Legislature said that a "violent and tumultuous" defence of property shall constitute crime, it said that the law, and the law only, shall be every man's castle and sure protection; and the section under which these defendants were indicted, was enacted for the purpose of providing for the punishment of such, who, not relying upon its power to protect their rights, endangered the peace of society by the use of violent means. The facts, gentlemen, the people expect to prove, it is unnecessary for me to detail to you. You are all familiar with the melancholy history.

Attend to the evidence.

Edward Keating, Esq. called and sworn.—On the night of the seventh of November last, I went into the storehouse of Godfrey, Gilman & Co. accompanied by Mr. Henry H. West. I saw in the store a number of people, and perhaps eight or ten of them armed. Mr. Gilman was not in the room. Mr. West inquired for him,—he was sent for, and came down from above to see us. Gilman was not armed. We went in to apprise Mr. G. and the rest, that the storehouse would be blown up or burned, if the *press* was not given up. Gilman expressed a great deal of surprise that such a proceeding should be thought of, and that the citizens of Alton would allow such a thing to take place. He said they had come to the determination to defend the property, and should do so if necessary, with their

lives. This was perhaps an half hour before the mob assembled. Mr. Gilman was not armed if I recollect aright. I saw there Messrs. Gilman, Tanner, Walworth, Lovejoy, and (here witness was interrupted by counsel for defence, who admitted that all who were named in the indictment were present in the building during the attack.) All whom I saw had arms, except Gilman. I saw no guns stacked up in any part of the room. I left the building, and soon after went to my office. At the time of the attack by those outside upon the building, I heard the report of firearms. The first report I supposed to be from a pistol, and immediately after, or nearly at the same time, I heard another report, which I took to be that of a gun. My impression is, that these guns were from those outside. I judged so from the sound, or noise of the report. Almost immediately after the report of the second gun, I heard a third, and exclaimed as I sprung to my office window, *that* must be from the inside. I heard, as I raised my window, the cry that a man was shot. I soon heard the report of another gun fired from the inside, and a man immediately cried out he was wounded. I now went down stairs, and out, and met persons carrying the body of Bishop to the office of a physician (Dr. Hart.) The mob had dispersed generally. I stood a few moments, and then returned to my office. Soon I heard a rush, and upon going to my window, found the mob had again assembled. I went out and joined the Mayor, whom I found addressing the crowd. We stood a little while—a gun was fired, the shot whistled about and came close round us. Soon after I saw another gun, pointed in the direction in which I stood, flash, and I decamped. These shots I now speak of, came apparently from the corner of the warehouse next the river,—were fired in the direction of those attacking the building, and appeared to be fired at some people who were engaged in raising a ladder to the roof of the warehouse. The press was soon afterwards given up. I then went into the building, and found

there Mr. Weller, one of its defenders, and the only one of them I saw there. He was wounded, and was sitting in a chair, near the stove, in the counting-room, bathing his leg. I went into the building previous to the attack upon it, and before any persons had assembled outside. I met no one on my return when I left the warehouse. I did not see Mr. Gilman when I first went in; he was sent for at the request of myself and Mr. West, and came down stairs to meet us. I did not recognise more than five or six of those in the building. All I saw, except Mr. Gilman, had arms. I saw no supernumerary arms. I don't know whether I saw any others in the building than those indicted. (By defendant's counsel objected, that the prosecution have no right to question a witness whether other individuals than those indicted were present, and objection sustained.) I did see Tanner, Lovejoy, Walworth, and Gilman. I was informed, before Gilman came down stairs, by some of those whom I saw there, that they had assembled to defend the press, but that they did not expect any attack that night. Gilman, however, not only said they had assembled to defend the press, but that they should do so, if it was necessary, with their lives. Each man whom I saw, except Gilman, had a gun. The doors were not "blockaded," and I was astonished at the little preparation for defence I saw. I was sitting in my office at the time of the first shots. I heard a pistol fired first, and then one or two guns on the outside, then heard another gun, which, from the sound, I judged to be fired from the inside. As I went to my office window, another gun was fired from the warehouse, and perhaps two; and some one screamed he was wounded. This was after Bishop was wounded, but before he was carried off. I had made up my mind an attack would be made that night, before it actually took place.

Cross-examined.—Did you not know a company had assembled that night to break open the warehouse? By walking the street that evening, I met five or six

persons, and I felt confident that an attack would be made, and in the manner I have related. My object in going into the warehouse, was to let those inside know that unless the press was given up, there was danger the building would be burned or blown up. Such was the rumor. I believed it. After I left the warehouse, I went to the Mayor's office, staid there perhaps fifteen minutes, left, went into my own, and had been there about the same time when the attack first was made.

At the time the Mayor was addressing the people outside, I saw four or five guns in the hands of individuals in the crowd. This was after the guns had been fired by those inside the warehouse. The mob first armed themselves with stones. The reports of the first two guns fired were at the same time—simultaneous with the shower of stones; the smaller explosion, that which I took to be a pistol, was a moment before. At the time of the third gun, I started to my window; the mob were then in front of the warehouse, and about six or eight feet from it. The crowd were then throwing stones.

I saw the preparation to burn the building, but it was after the time I now speak of. There were cries to burn the building, and from a great many voices; they were given at the onset, after Bishop was shot.

It was about eight o'clock in the evening that I understood that the building would be burned or blown up, if the press was not given up.

Q. Did Gilman state to you, at the time you were in the warehouse, that they were there by, and acting under authority? I do not recollect; Gilman appeared to be very much astonished at the communication I made him. Q. Did Gilman, at the time when he said they would defend the press, if necessary, with their lives, request you and Mr. West, or either of you, to call upon the Mayor, and request him, from them, to summon the people to suppress the mob? He did ask Mr. West to do so. Q. Did Gilman address the people outside? I do not know, I was not there. Q. Did

West go to the Mayor, in pursuance of such request made him? I do not know. I left West in the warehouse, and went to the Mayor's office alone.

Q. Did others express surprise that an attack was to be made upon the building, or press, that night, besides Gilman? (Objected to, by Government, on the ground that Gilman was alone on trial, and so irrelevant, and objection sustained.)

Examined by Counsel for Government.—I saw no attempt to fire the building till Bishop was killed; nor did I see any intention to use firearms till that event. In fact, I saw no arms, till the period when the Mayor was addressing the crowd. I knew of the intention to blow up, or set fire to the building, and communicated such knowledge to Gilman before the mob assembled.

Again Examined by Counsel for Defendant.—

Q. Did you not see persons assembled together, prior to the night of the 7th, armed with pistols, and avowing their intention to destroy the press? (Objected to by Government, but sustained.) Prior to the night of the 7th, and on that of the 6th, I was down upon the bank of the river: a number of people were there together. I talked with one who had a club; told him that his stick was not much of a weapon, or some such thing. He dropped his club, and showed me a pair of pistols in his dress, about his body. An order was soon issued by some one of them, "Forward march. Let's go up to H——, and get some drink." They marched off, but soon came back again,—had further conversation, in which they said they were waiting for the press; (here objection made by Government's Counsel, that this evidence was improper, unless connected with individuals who composed the mob, and objection sustained;) at this time, there were ten or fifteen people assembled. I had pocket pistols, I carry them always.

The Court here stopped the witness, and stated, that a petition had been presented to the Court, requesting the Government would draw to its aid the services

of the Attorney General of the State, U. F. Linder. Under the law, the Court has the power to appoint counsel for Government, to assign to gentlemen the duty of appearing in any cause, where, for any of the causes stated in the law, the necessity should exist for such appointment. But in the case at Bar, it seems to the Court that none of the emergencies contemplated by the law, as ground for the exercise of the power of the Court, in reality exist. The Government are represented in this cause by the City Attorney, and if he does not choose to seek aid in the services of others, it is not for the Court to interfere. While the people's Attorney is acting in the discharge of his duty, the Court have no authority to interfere and direct him to accept the tendered services of others. The Court would say it entertained a high regard for the petitioners, but, to grant the prayer of their petition, it would arrogate to itself power not delegated to it by law. Under the law, and the facts presented, the Court has no right to appoint any Counsel in aid of the prosecuting officer; and an arrangement to secure Mr. Linder's services must be by consent and agreement of the officer, upon whom the law had imposed the duty of conducting the prosecution.

Davis, in behalf of Mr. Gilman, expressed perfect acquiescence in any arrangement which should be made. They had supposed they should find him and the Attorney General side by side with the City Attorney in the prosecution of this cause; they knew not that he was not to assist the prosecuting officer, until the very moment the trial came on,—and in behalf of his client, the defendant, he would say, that though he could not deprive the Government of the aid, if the individual tendered it; nor compel the Government to receive the services, if they were disinclined so to do; yet he hoped he might be permitted to express the perfect satisfaction the defendant would feel at finding the Attorney General supporting the laws of the land in conducting this prosecution.

By Murdock.—The gentleman's services are accepted.

Question by one of the jurors.—At the time you went to the warehouse, had there been any attack upon the building? Ans.—Not to my knowledge.

Henry W. West.—On the night of 7th of November last, about eight o'clock in the evening, I was standing in my store door. John Solomon passed, and remarked, that he believed there would be a mob that night, and that preparations were making to burn or blow up the warehouse unless the press was surrendered, and that the building would be destroyed, unless the press should be given up; said Gilman had been friendly to him, and he did not want to see him injured, or his property destroyed. He urged me to go up and tell Gilman. In company with Mr. Keating I went into the warehouse, and inquired for Gilman; he was up stairs; we sent up to him that we wanted to see him, and he came down. I then told Gilman the rumors, and the circumstances. Gilman replied to me that he had thought the matter over seriously, and said he should not give up the press, but should defend his property at the risk of his life. I returned to my store. Soon started to go to the warehouse again. Met Dr. Beall on the way, and asked him to go with me; he declined. I then asked him to use his influence to suppress the mob and to endeavor to get them to disperse; he replied he could have no influence and would have nothing to do with it. I kept on, and went up to and into the warehouse.

The mob came while I was in the warehouse—a stone was thrown against the door. I think Gilman went to the garret door, opened it, and asked them what they wanted. The mob replied, the press. Gilman said it did not belong to him, it was stored with them, and he should defend it. The mob said they would have it, and started off round the corner to the other front of the store. At this time pistols were fired, then a gun from the mob, and Mr. Gilman requested me to go and see the Mayor.

After some time I went again into the warehouse with Mr. Krum, the Mayor, and Mr. S. W. Robbins. The Mayor had some conversation with Gilman. It was about 8 o'clock when I first went to the warehouse. I saw there Walworth, Long, Morse, Tanner, Lovejoy, Gilman, and others. They were most of them armed, principally with muskets or rifles. I don't know whether the arms were loaded or not. I heard nothing said about it. I saw some guns standing in the room; appeared to be stacked supernumerary. When the firing commenced I was in the third story of the warehouse. There was firing by those inside while I was there, though not a rapid discharge. One gun only was first fired. Some individual inquired, "who fired that gun?" "I," was replied by some one, but by whom I don't know. Shortly afterwards there were two or three guns fired from another part of the warehouse than that in which I was. I now saw Gilman the second time with a gun. I am positive, though I do not recollect what he was about the first time when I observed he had a gun. When Bishop was killed I was still in the warehouse. I saw Gilman with a gun both before and after the firing commenced, but he did not fire. I think it was Gilman who asked "who fired?" and the question was asked in a remonstrating tone. I do not know who fired of those who were in the warehouse. I did not hear it spoken of at all, neither do I know what was said or done by the persons assembled out of the warehouse at the time of the firing. About the time or soon after the first gun was fired from the inside, some persons remarked they saw some person picked up.

The stones came through the windows and near me. The people inside could have sheltered themselves from the stones behind the walls of the house. The firing was from that end of the warehouse next the Penitentiary, and I understood that the person who was shot, was shot in that direction.

I did not see any person when about to fire from the windows.

Before there was any firing there was some conversation about the manner of doing it, though I do not recollect precisely what. I said, however, that if it was found necessary to fire at all, in my opinion it would be best at first to fire over the heads of the crowd. Mr. Lovejoy replied, that "they must not waste a fire." There was an attempt made by the people inside the store to effect a reconciliation so far as this, Mr. Gilman addressed the people who had collected outside. People inside among themselves seemed firm, cool, and collected. Gilman remarked that he thought he had a right to defend his property, and he should do so at all hazards or at all risks. I once attempted to prevent Gilman from firing; he was then in the garret at the door or near to it. Gilman told me I should get hurt if I staid at the door, and advised me to move away. The second time I was in the warehouse, I saw two guns which were not in any one's hands; they were standing up.

My own opinion was that the press had better be given up, and I so advised Gilman. The reply by Gilman was that they would not give it up—he said he did not believe the mob would go to such extremes when I told him that they would burn or blow up the building in order to get the press, and he seemed solicitous about it; "he seemed anxious nothing of the kind should be done." When I came out of the warehouse Bishop had been killed, and the mob then had guns. The mob first approached the warehouse on Water street. I did not see them at that time, as I was standing back from the door in the warehouse at the time. I should think there were from fifteen to twenty people in the warehouse, though I don't know with certainty how many there were. All were not armed. Mr. Noble had no gun, and he remarked that he would not shoot. When Gilman was at the window intending to fire, the stones were flying through the room. It was prior to Bishop's death. I heard Gilman say that the press was stored with them. The members of the firm

are Benjamin Godfrey, and Winthrop S. Gilman. I know nothing which took place prior to the night of the 7th of November, in regard to this matter.

Cross-examined.—There was a good deal of danger to those inside from the rocks flying into and through the rooms unless they were protected behind the walls. The glass was all broken from the windows, and I think the sash also. There was no opening in the building except the skylight, that I know of, other than what was on the ends fronting the river, and Penitentiary. Some of those whom I had seen in the street threatening to blow up or fire the house, were some of those who composed the crowd attacking the building. There was a discharge from some weapon on the outside before there was any firing by those within the building. I think the weapon discharged was a pistol, and that it was fired when the crowd were passing from Water street round the building.

I was present at the time of the Mayor's address. Where the shot which reached us at that time were fired from I don't know. He was standing so that shots fired by those inside the building could have reached him. Mr. Gilman, previous to any firing from any one addressed the mob, and requested them to retire and desist from their purpose. I could not see the crowd at the time of his address to them, and I do not know whether any one of the mob presented a pistol to him or not at that time. After the Mayor had concluded his address to the mob, the firing was renewed by those on the outside and within the warehouse. I had two different interviews with Gilman. Those inside the warehouse avowed their intention of defending the press solely, and disclaimed any other object. They said they would not be the first to commence an attack. Mr. Gilman remarked, that he should be sorry that any blood should be shed, but that they would defend the building at all hazards, if need were with their lives.

Small shot were first fired; this was so when the

Mayor was addressing the mob, and I saw some holes made in hats by the fire from the building.

Re-examined by counsel for Government.—I saw Bishop after all was over, his wounds were not made with small shot, he appeared to have been shot with buckshot.

Sherman W. Robbins.—I know and can state nothing which transpired on the night of the 7th of November last, which has not been already stated, and indeed I can not state so much as Mr. West has. I knew nothing of the riot till after Bishop was killed. I went with the Mayor and Mr. West to the warehouse and we were admitted. Most of the individuals whom I saw in the building had firearms. There was no firing from the building while we were inside. We went into both buildings; there is means of communication from the one to the other inside. We went into the second story, but I think not into the third. There were persons placed in the second story, in each room of said story—they appeared to be stationed at certain places in each room. I saw Mr. Gilman there; he had a gun in his hands; he said but little in my hearing. The Mayor, Deacon Long, and Mr. Gilman, stepped aside and had some conversation. Our object in going in was to communicate the request that those outside had made of us.

I saw the doors of the warehouse, but did not notice them particularly. It was a few minutes before we could gain admittance, and I presume they were fastened. I saw a number of individuals with firearms, and two or three guns were set up against the side of the room. I did not see so many as twenty or thirty guns loaded while in the house, though I understood they had as large a number with them.

Cross-examined.—I told those inside that the persons outside said, "that if the press was not given up, the building would be burned or blown up." I told Mr. Lovejoy that I understood this course was to be taken from the mob outside, and distinctly said that such was the determination of the mob, as we were informed.

Samuel Avis.—I was not out till after the fire had been put out, Bishop had been killed, and the firing was over. I went inside the warehouse, saw no one there whom I thought had been in the building during the riot except Mr. Weller. I saw the body of Mr. Lovejoy. I saw firearms. I saw only one gun, however, I think, and that was in the counting-room. I remained but a few moments. I saw no ammunition, no preparation for, nor indication of war.

This witness was not cross-examined. The court here adjourned. At the afternoon session,

Anson B. Platt, a young lad was called, and by agreement of counsel for the people and accused, he was examined by the court. The indictment was first explained to him, and then in answer to the interrogatories of the court the witness testified as follows :

I know there were some guns fixed at our establishment. I run some bullets by the orders of Mr. Tanner. By our establishment, I mean Mr. Roff's establishment. I saw some guns standing in the room but did not count them to know how many there were. I don't know when they were taken away nor where they were carried to. I saw them there before "the mob took place." The guns were standing there when they were taken to be carried to the church. They were returned to the store after the night of the "church affair." I saw no one carrying away the guns. I run nearly a tumbler full of buck-shot, and some of other kinds. I don't know for what purpose they were run. Mr. Tanner did not tell me why he wanted me to run them, nor what he was going to do with them. Henry and William Tanner, both of them asked me to run the balls. Mr. Gilman didn't ever ask me to run any balls. Tanner did not tell me what they were going to do with the balls. I was at the store at the time of the riot. I did not go to Mr. Gilman's store till the fuss was over. I saw one gun standing near the door, and no more than one. I did not know the gun as I know of. I did not see any of the balls or shot I run in the store. I did

not see Mr. Gilman in the warehouse. I saw no one firing the guns but only standing in our store. There was one old gun among them. They were principally rifles, but there was one shot-gun. I know of no balls that were run except those I run. I run the balls at different times, and they were taken away from the store. Mr. Butcher took away the last I run. I don't know where he took them to. He went down stairs. Mr. Roff is a merchant, and he keeps guns to sell. I know he keeps guns to sell because they are offered for sale. The guns we keep in the store for sale are new. I saw only one old gun and that was a fowling-piece. I know the guns were gone. They were missing before Lovejoy was shot, how long before that I don't know. I don't know how many guns there were in the store. I should think there were a dozen in all, and all of them were gone. The balls I run were made to fit the guns I expect, but I don't know. All the guns I saw and speak of were up stairs on the second floor. They were not usually kept up there. The guns were put up there after they were brought back from the church. They were the same guns that Mr. Roff had previously in the store for sale.

John H. Watson.—I know nothing at all about Mr. Gilman. I did not see him at all that night. I was not at the warehouse till all was over. I know of no previous preparations. I went to the warehouse, but could not get in. I tried to get in after I heard Lovejoy was killed, but could not get in. I was in Mr. Keating's office when the crowd first passed by the office towards the warehouse. They had no firearms among them that I saw. They picked up some stones as they passed the office, and proceeded towards the building. The mob threw stones at the warehouse for some few moments. About the third gun Mr. Keating sprang to his office window, and remarked he thought it was fired by those inside the building. I then found out that Bishop was killed. I left Mr. Keating's office :

went into Dr. Hart's office. I soon left there and went to Hawley, Page & Dunlap's, and staid till 2 o'clock.

Cross-examined.—There was firing at the time the stones were thrown,—I saw but few thrown. I had not been in the streets at all that evening.

Joseph Greeley.—I went to my boarding-house the evening of the seventh of November last, at the usual tea hour. At the table I was told that an Independent Militia company was to be formed that evening under the laws of the State. I was told that the individuals favorable to the formation of such a company were to meet at Godfrey & Gilman's store that evening, and was urged to attend. I declined going on the ground that I feared it might be an abolition meeting, but was assured that it was no such thing. In the evening I met another individual who said he also had been requested to attend, and we went down to the warehouse together. I found an individual there with the laws of the State. They requested me to sign a paper which was drawn up and ready, and which was a set of by-rules, as I understood, and I did so. The number of people which the law requires having signed the paper, we proceeded to an election of officers and made choice of Mr. W. G. Attwood, as Captain. After we had made choice of officers we proceeded up into the second story where we found some arms. We took them and paraded and drilled for a little time, but as the guns were loaded we did not exercise much. This was between seven and eight in the evening. About eight o'clock the inquiry was made, "Who would stay and defend the building that night?" The company were at this time in a circle, and some of them stepped forward and volunteered. I was asked to stay, but declined doing so, and went home. I knew nothing else till the bells rung. I then got up and went down to the spot. There were about thirty or forty guns in the warehouse. The guns were said to be loaded. We exercised a little with them, and but little, and I

supposed it was because they were loaded. I understood so. Mr. Gilman was present at the time we were drilling, but was not active. Mr. Gilman was one of the company which was formed. It was remarked that Mr. Gilman was tall, and must take the right of the company. I was informed that the company was to be formed under the provisions of the laws of the State, and there was one individual there who had the laws in his possession. I do not know that there had been any steps taken preliminary to the formation of the company except what was done that evening. When I got there I was informed that they were waiting only to get a few names to enable them to choose officers. They were soon got, and then the company proceeded to the election. Nothing was said about the object of forming the company.

Question by Counsel for Government.—What appeared to be the motive of those who volunteered to stay that night in the building?

Why, some appeared to think that they would have a good time if they stayed. They expected to have some crackers and cheese, and hear some good stories. The volunteers, when they were called, stepped forward in the circle. It was generally understood that a press was in the building, and I suppose those who volunteered to defend it expected an attack. I saw no press. I was present at its destruction—saw it knocked in pieces. The behavior of the mob engaged at the work was orderly—it was done in a quiet sort of way. They seemed to be happy while engaged in breaking it in pieces. Soon after the press was broken up I went home.

Cross-examined.—I heard something said about fire, but don't know what it was. I heard nothing said about any design of attacking the building previous to the attack. The streets were deserted at the time I went home from the warehouse. I understood the formation of the company to be under the provisions of the law. Mr. Walworth (one of the defendants) asked

me to go up to the warehouse and join the company. I do not recollect seeing Mr. Murdock (City Solicitor) there. [Admitted, however, to be true that he was there.] I understood the defence of the press was an entirely distinct affair. I joined the company, understanding it was formed for the defence of the city. I cannot tell how many people were in the warehouse at the time I was there.

The People here rested their cause.

For defence. To save the trouble of examining witnesses to the point, there being no doubt as to the fact, the defendant's counsel admitted the warehouse was the property of Benjamin Godfrey and Winthrop S. Gilman.

William L. Chappell called and sworn.

Q. On the night of the 7th of November last past, previous to any attack by the mob upon the warehouse, did you go with Winthrop S. Gilman to the Mayor? If so, state what passed at the interview between the parties.

The People, by Linder, here interposed an objection to any answer being made to the question by the witness. I anticipate the object aimed at by the counsel, your honor; and I may as well state my objection here, now, and in full, to any answer which may come from the witness. For what is this witness introduced? Why is he brought here? Sir, it is to show, by hearsay, that the defendant now upon trial had a conversation with the Mayor, and also the nature of that conversation; it is to show that the defendant acted under an authority, which this witness is to swear he received from the Mayor; it is to show, so far as the declarations of this witness go, that the acts done by this defendant, on the night of the seventh, were legalized beforehand by the Mayor. Now suppose this witness should swear, that the Mayor authorized the defendant to arm himself and his friends, and assemble for the protection of that warehouse;—suppose he should swear that the Mayor gave him permission to act as he

did ; what then ? why sir, we say that the Mayor had no right, had no business, had no power to give such authority ! Sir, he had not such power. Where does he derive his power ? The Mayor is invested with certain authority under the act which incorporates the City of Alton, under the by-laws,—under the rules and regulations which the City Council have ordained. But, sir, in the act of incorporation such power is nowhere given to the officer—you can't find it there—you can't find it in the City charter—you can't find it in the ordinances of your City Council. We contend that he did not have such power as a peace officer, for the laws have not given to peace officers such authority. Then we say that such power as would enable the Mayor to grant Winthrop S. Gilman the authority contended for is not vested in that officer by the City Charter, nor by the By-Laws of the Council. The Mayor is only a peace officer, having certain delegated powers in criminal cases, which are entrusted to all peace officers. But, sir, suppose such authority was given,—suppose the Mayor had a right to give such authority, I then object that this witness cannot be called to testify to it. If he should be permitted to do so it would be hearsay evidence. The Mayor is in Court,—he knows what authority he gave. Let them ask him. They are bound to produce the best evidence, and they cannot be permitted to give evidence of the Mayor's declarations, when he himself is in Court, ready, if called upon, to testify. A party is bound to produce the best evidence.

Cowles, for Court.—The Mayor is, ex-officio, a Justice of the Peace. The Government, in the long speech just submitted to the Court, has assumed that the Mayor had no power, had no right to grant Winthrop S. Gilman the authority which we propose to show he did grant to him. There is some difference between assumption and proof. But may it not be shown that the defendant had no criminal intent in doing the acts, in the commission of this offence, if the

Government will persist that it was an offence, by proving, that he asked the advice of the Mayor—that he anxiously sought his direction, by proving that he was careful to do nothing until he had first consulted that officer. Suppose, sir, we show that Mr. Gilman, on that evening, consulted the Mayor of this city; and that at the close he went away actually having, or honestly supposing he had, full and complete authority from the Mayor? what then will be the consequence? what will be the effect upon this jury? what becomes of this indictment? how will you make out a crime? where then is the criminal intention, a necessary ingredient in crime? But take the question upon consideration of power, of authority in the Mayor. The criminal code of this State has the following provisions:—"If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable, or *other public officer*, such persons so offending," &c.—§ 113.

Again, "Every male person above eighteen years of age who shall, by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, justice of the peace, or *other officer concerned in the administration of justice*, shall, upon conviction," &c.—§ 137.

Now, sir, your Mayor is, ex-officio, a justice of the peace, and by your laws "all officers concerned in the administration of justice" are conservators of the peace, having full power to take such measures as they may deem expedient for the *prevention* of offences, as well as the punishment of offenders.

Well, here was a plan premeditated, openly and boldly promulgated, avowed with such boldness as that it reached the ears of your very *peace officers*, to destroy the press; and if it was necessary to the accomplishment of that purpose, they proclaimed their inten-

tion of burning or blowing up the warehouse. Will the Attorney General say that a peace officer could make no provision to prevent the commission of such a crime? Will he hazard the assertion, that our laws compel one who is a conservator of the peace, to stand by, and folding up his arms, await with such patience as he could, the arrival of the period when he might interfere, not for the prevention of the offence, but for the detection and arrest of the offenders? Sir, prevention is better than cure, and our laws guard as well against the commission of crime, as provide for the punishment of offenders. But your Mayor, *ex-officio*, is a justice of the peace, and as such, had authority to take such steps as would prevent the commission of the offence which was threatened.

But the ground upon which we contend we have a right to the testimony of this witness is, that he goes to show the absence of all criminal intention on the part of this defendant.

The Government urge, secondly, as ground of objection to the admissibility of this evidence, that it is in the nature of hearsay. But may not the declarations of an officer of the law be given in evidence? may not the official declarations of an official person be admitted? We wish, however, only to show by this witness, the absence of all criminal intention on the part of the defendant, and for that purpose offer to prove, that he went with the defendant to the Mayor, and that in the conversation that was held Mr. Gilman had, or supposed he had, received, the authority of the Mayor, to pursue the course which was taken.

Bailey for Government.—The witness is offered to prove the declarations of a third party. The fact that Mr. Gilman had, or supposed he had, authority from the Mayor, is proposed to be proved by hearsay. Such evidence is inadmissible. The person, whose declarations are sought to be proved, is present in Court. He can best tell what authority he gave. The course proposed by the Counsel is most extraordinary.

Per Curiam. It is unnecessary for the Court to give an opinion upon one branch of the subject argued. The question whether the Mayor had the authority contended for by the one and denied by the other side, is not necessarily involved in the decision of the question presented to the Court.

The only question to decide, is, as to the admissibility of the evidence proposed to be introduced. The declarations sought to be proved are inadmissible. They are in the nature of hearsay evidence. Any evidence of the declarations of a third person as a general rule would be inadmissible, and especially when the person whose declarations you seek to prove may himself be sworn to testify. It makes no difference whether such person speaks officially, or as a private individual. The evidence cannot be received.

Cowles.—I offer the witness to prove a fact. I wish to prove that Mr. Gilman, in company with the witness, went to the Mayor for the purpose of getting his permission, his authority to enter and defend the building. I do not offer the witness to prove what the declarations of the Mayor were.

But the testimony of the witness for this purpose was objected to by the Government, and the objection sustained by the Court.

The Record Book containing the Minutes of the doings of the Common Council of the City of Alton, was here introduced, and F. B. Murdock called and sworn.

Q. Are these the Records of the Common Council of this City? They are. Are you the Clerk of the Council? I am.

By Cowles.—I propose to read to the Jury an extract from this book. It is part of the Record of the doings of the Common Council on the sixth day of November last, the day preceding the commission of the act for which my client is now arraigned as a criminal. I offer it as proof of the fact, that the Mayor on that day applied to the City Council, at the instigation of Mr. Gilman, to appoint an additional police.

The evidence was objected to, and Mr. Linder, Counsel for the people, said: We make the same objections to the introduction of this book in evidence, that we have previously made to the admission of the testimony of the witness, Chappell. They propose to prove by this book, what? Why, that the Mayor stated to the Common Council, that Mr Gilman had stated to him, he apprehended danger to his property, and desired that a body of special constables should be appointed. Our objection to the testimony sought to be derived from the witness, was, that it would be in the nature of hearsay evidence. The Court so decided, and ruled it to be inadmissible. We now object to the introduction of this book, because it goes to the Jury as the hearsay of a hearsay. This case is like that which might arise in legislative proceedings. I had the honor, sir, of once introducing to the assembly of this state, for its consideration, some famous resolutions, in regard to the bank; and would your honor hold, that I could prove the contents of those resolutions by the minutes of the doings of that body? Could the proceedings of that time be proved by the Journal of the House of Assembly? The evidence offered here, is the record of a representation, made on the sixth of November, to the Common Council by the Mayor; of an application made to him by Winthrop S. Gilman, in relation to an apprehended attack upon his property. It is made competent evidence because it happens to be enrolled upon parchment, and included in doings of the Council Board!

Defendant by Cowles.—The defendant is indicted for doing a lawful act in an unlawful manner. He is charged with resisting with force and arms, in a violent and tumultuous manner, an attempt to break open his warehouse. Our object is, to show that the attack upon the building was not only premeditated, but that the Mayor was apprized of such premeditated attack beforehand,—that Mr. Gilman communicated to him his fears, his anxieties in regard to the matter, and that by rea-

son of the communication made to him by Mr. Gilman, the Mayor acted, and applied to the City Council to appoint a body of special constables. If we can show the fact, we shall ask the Jury to draw certain inferences.

Sir, it is the business of your Mayor to preserve the peace of the city,—it is his duty. He has the power, upon him rests the responsibility. His acts are public acts, and when he, for the purpose of preserving the peace of the city, makes application to a co-ordinate branch of the city government, and that body act upon such application, it then becomes a public act, entitled to credit, entitled to be received as evidence in a court of law. We want to show the fact that the conservators of the peace of the city, the guardians of its welfare, those invested with power, those clothed with authority,—who were bound to suppress tumult and riot,—who were bound to preserve order and peace, whose duty it was to stretch the strong arm of the law over the humble and peaceful citizen, knew of the danger Gilman apprehended to his property. And if we can prove this knowledge; if we can bring it home to them, and also prove how, and for what purpose it was communicated to them, and prove it too by the record of their own proceedings, drawn up, and written out by their own officer, we ask the privilege, as we claim the right. The acts of the Common Council of this city are public acts—their record of those acts is a public record—and it not only is evidence, but it is the best evidence that can be produced.

People by Bailey.—The object for which this book is offered in evidence is to show the intention of the defendant; to prove to the Court, that he had no criminal design, and to clothe such evidence with peculiar sanctity, by deriving it from a public record.

But although this evidence might avail other defendants upon another trial, it will not be deemed relevant in this. Mr. Gilman is now alone upon trial, his name is not mentioned in the record, and the book can-

not therefore be admitted in evidence. If admitted, it would only prove that the Mayor received the information, which he communicated to the City Council in relation to the apprehended attack, from *some* citizens, and would be no proof that the defendant was the one from whom he received the information.

Per Curiam.—What is the Issue made in this cause?

On the part of the people, that there was an unlawful assemblage on the night of the 7th of November last. On the part of the defendant, that certain facts exist which warranted that assemblage; that in the commission of the acts charged to be criminal, the defendants were justified, they having acted under the authority of the Mayor. There can be no question that if they acted under such authority, they may justify their acts. The Mayor and Common Council are the guardians of the city—they are intrusted with certain powers, among which they have the authority necessary to preserve the peace of the city;—if they have reason to fear the tranquillity of the community to be in danger—no matter from what cause—they are bound at all hazards, and at all times, to provide means to protect the persons and property of the citizens commensurate to the apprehended danger. By virtue of his office the Mayor may call out the militia and other citizens to suppress tumult and riot—all are subject to his authority—all are bound by any order he may issue on such an occasion, and the citizen who should refuse to obey, would be liable to the penalty of the law.

The defendant, for the purpose of showing the intention which actuated him in the premises, offers the records of the Common Council in evidence, to show that he communicated the danger which he apprehended to his property, to the Mayor of the city, and requested the appointment of special constables to prevent the anticipated destruction of property, and disturbance of the peace of the city. But it is objected, that the admission of the book would be permitting evidence to

go to the Jury, which, on account of its character, is inadmissible. The book contains the proceedings of the Common Council. It is the record of their official acts, and, by the charter creating the city, a certified copy of their proceedings is admissible as evidence in every court of this State; therefore the record itself must be admissible. The Court can perceive no objection to the admission of the book in evidence.

The book was thereupon handed to Mr. Murdock, who was requested to read from the record of the doings of the Board, at its sitting on the 6th of November. He read as follows:—"The Mayor informed the Council that individual citizens had represented to him that they believed themselves to be insecure in their persons and property, and that he, the Mayor, from the facts in his knowledge, and from the faith reposed in the representations made him, had much reason to believe that the peace of the city would be disturbed: and he submitted to the Council the propriety of authorizing him to appoint special constables to aid in the maintenance of order."

At the request of Linder, for the People, he proceeded to read further from the records, and as follows:—

"Mr. King moved the following resolution:

"That the Mayor and Common Council address a note to Mr. Lovejoy and his friends, requesting them to relinquish the idea of establishing an abolition press at this time, in the city, and setting forth the expediency of the course."

"Not acted on."

John M. Krum, Mayor, was called to the stand, sworn, and said: With the permission and indulgence of the Court, I should be glad to avail myself of this opportunity to make a few remarks before I proceed with my testimony. Such leave having been granted, he proceeded. I profess to know the prerogatives of the Court and Jury, and the province of a witness. It is my desire to keep within the province of a witness.

There are circumstances however attending this case, so peculiar in their nature and tendency, that I feel it due to myself, due to my official station, and due to the defendants and the public, that I should ask from the Court, from Counsel, and the Jury, in giving my testimony, a somewhat wider range than is usually allowed witnesses in ordinary cases.

I am not insensible of the conspicuous position which I occupy as a witness, in this instance ; nor am I destitute of the feelings and sensibilities that are natural to mankind. But from the relation I bear to the citizens of Alton—from the official station I occupy—and when the peculiar attitude in which I have been placed, from the force of circumstances, in reference to the unfortunate transactions which have led to this prosecution, are considered, I trust the Court, the Jury, the accused, and Counsel, will pardon me for asking the indulgence.

It will not I trust be considered strange that I should manifest some sensibility, when called to testify in a case attended with such unusual excitement : it will not be considered strange, that I should manifest some feeling and timidity, while the attention of this large and anxious assembly—of this community, and the public, is directed to myself, and to the evidence I shall give before the Court and Jury. And when it is considered how strangely, how wickedly and meanly, the recent melancholy excitements in this city, and my own conduct and motives have been misrepresented, impugned and calumniated before the public, it will not be thought out of place, that I should ask of the Court, of Counsel, and the public, the most careful and scrutinizing attention to my evidence.

I have hitherto borne the injuries done to my feelings, and the imputations against my character, in silence and with regret. I have deeply regretted that the public and the press should give birth and circulation to reports, which have been without foundation ;—false and libellous in their character.

Doubtless many have aided the circulation of such reports, very innocently, and with no bad or criminal intention.—I most cheerfully forgive all who have been in any way instrumental in this, when they were ignorant of the situation in which our citizens were placed.

Those who have given origin to false statements and misrepresentations, connected with the recent affairs to which I now allude, whether in reference to myself or to others, are guilty of the most heartless, reckless, and degrading meanness, and well deserve individual and public execration. I profess to know and appreciate the responsibilities and duties that rest upon me as a man and a citizen: I trust I feel and appreciate the responsibilities of my official station, and my duties to my fellow citizens.

Nor have I been insensible of the peculiar and trying situations in which I have recent'y been called, in discharge of my official duty. Few men, in so brief a period, have been placed in more trying or critical situations.—During the whole of the unhappy excitements that have heretofore prevailed to such an alarming extent in this city, I endeavored to act with firmness, prudence, and with moderation.

It was my firm conviction that the exigency of the times required at my hands the course of conduct, official as well as private, that I did pursue. It was my earnest desire, to heal the unhappy dissensions and avert the fatal and disastrous calamities with which we were threatened—my time, labors, and influence, have been cheerfully and zealously devoted to accomplish an object so desirable.

I leave my fellow citizens and the public to judge of the propriety and correctness of my motives and conduct. Notwithstanding the calumnies that have been heaped upon me and my official conduct—although my motives have been assailed in a manner that might well arouse my feelings, I am grateful, and feel proudly elevated in my own estimation, that I can stand before my fellow citizens, fully conscious of the rectitude of

my conduct and my motives.—I have the consoling reflection, that I have at all times endeavored to discharge my duty as an officer and a citizen with unflinching firmness, to the best of my judgement and abilities. I am grateful that I have been called upon to give evidence, before this Court and Jury, under the fearful solemnity and unction of an oath, of matters that have so long been the theme of abuse and defamation, and I hope the result of this investigation will save in future, the feelings of sensibility from defamation and outrage, and serve to disabuse the public mind.

I am ready for examination as a witness.

It was proposed and agreed, that the witness, commencing at the organization of the City Government, should give a connected narrative of the facts from that time to the time of the riot, so far as they were connected with the defendants on trial.

At the time Dr. Beecher preached upon anti-slavery, I forget the day of the month, and perhaps some one will remind me, (here some one remarked it was on the 30th day of October,) as I was going to dinner, Mr. Alexander informed me that he (Beecher) was to preach that night at the Presbyterian Church. He asked me if I would not attend. I replied that I did not know—I would see. I had an appointment, which I expected would occupy a part of the afternoon, and thought would extend into the evening. In the afternoon, Mr. Gilman came into my office, and commenced a conversation with me. In the course of it, he told me that they expected another press would arrive in a few days; that they had organized themselves into a company, and that they would be ready, in case any violence should be offered, or any disturbance take place, to act in obedience to any civil authority. At the close of the conversation, he asked me to go with him into Mr. Roff's store. I went with him, and found there, Messrs. Roff, Walworth, Breath, one or both the Mr. Lovejoys, I think both, certainly Rev. E. P. Lovejoy, and I presume others. They stated to me that they expected

the press would arrive soon ; that it was consigned to A. B. Roff, and that they expected it would be landed at Mr. Roff's store. Some one, I do not recollect who it was, remarked that Col. Buckmaster had told them he would not have it in his store, on account of the insurance. They then remarked, they had prepared themselves with guns, in case of there being any trouble, and said they expected the press would be assaulted. I thought, and told them so, that if the press was landed in the day time, I should apprehend no danger, and could not believe that an attack would be made under such circumstances. They replied to me by saying, that in case any disturbance should take place, they would hold themselves ready to obey my orders. I thanked them for their offer, said it was all very well, and left. They had guns in the store at this time. I saw them. Some one (I think Mr. H. Tanner) proposed the plan of taking the guns to Mr. Gilman's warehouse, and asked me what I thought of it. I urged upon them the propriety, the absolute necessity of acting with moderation and prudence, and remarked to them, that it seemed to me that nothing would tend more to increase the excitement then existing upon the subject, than for them to appear in the street with arms. I did not consider that I was there, at that time, in my official capacity, as Mayor. They again repeated to me their readiness to act and obey any orders they might receive from the civil authorities. I thanked them for their readiness to do so, and begged of them, if they should deem it necessary to take the guns to Mr. Gilman's store, they would take them there in such manner as to avoid exciting any suspicion, and suggested the plan of carrying them there in a box. In the meantime, a boat, I think the ———— was coming up the river. She was in sight, and soon reached the town. As she arrived and landed Mr. Gilman and myself went on board of her, to ascertain whether the press was on board or not. I soon ascertained, from the Captain, that the press was not there, and we, or I left. When

I got to Roff's store, as I was passing to tea, J. S. Clark and Mr. Gilman were standing there, engaged apparently in conversation. Mr. Gilman asked me if I should attend the Church that evening : I replied that I had not intended to. He urged me to go ; said he apprehended there might be some difficulty, and in such case my presence might be desirable. I said if my presence was necessary I would go. The conversation then turned upon the arms which were in the store, and he (Mr. Gilman) asked me what I thought of having the arms in readiness, near the Church, in case any disturbance should take place. I told him I did not apprehend there would be any necessity for having them there. Mr. Gilman replied, he hoped that no disturbance would take place, but that he feared there was more danger than was imagined. I then told him that I did not know but it would be well enough to have the arms in some convenient place here, (meaning at Roff's store,) in case they should be wanted. At the proper time I went to the Church. I found there a large congregation assembled. All was quiet and peaceable. During the services, and towards the close, a stone was thrown through the west window of the Church, but did no injury. The congregation rose immediately to their feet, and some one, I think from the gallery, cried out, "To arms." I afterwards was informed that this individual was Mr. H. Tanner. There was a rush towards the doors, but Mr. Beecher asked the audience for their attention again ; order was soon restored, and the services proceeded to their close without further interruption. The congregation was soon dismissed : with the others I went out. The people were crowded together around the doors, and Mr. Mansfield, and some others, stood there with their arms. There was quite a crowd (a good many boys) around the doors in front of the Church, halloing, and calling those who had guns cowards. I immediately endeavored to get the attention of the crowd, and soon succeeded, when I commanded them, one and all, immediately

to depart, and repair to their respective homes. The first intimation I had that the arms had been carried to the Church, was by observing them in the hands of those who stood at the doors. The crowd, soon after I made proclamation, dispersed, and, in company with others, I started and came down the street. At the bridge there was quite a collection of people, and I took a gun away from a man by the name, as I have since been informed, of John Adams, who stood there. Subsequently to this, I was frequently called upon by Mr. Lovejoy, (now deceased,) Mr. Tanner, Roff, and others, and my opinion asked in regard to the propriety and expediency of organizing an armed force. I remarked that at present there was no organized militia force in the city, and no force upon which I could depend in case of emergency. They stated that they thought of forming a military company, and asked me if, in case they did, I would head it. I told them I could not, that my official situation was such as would render it impossible. Mr Lovejoy, in particular, called repeatedly upon me, and said that I ought to command a military force. I told him I could not consent to do so ; that I never should do so unless it became necessary for the protection of the laws. We had repeated conversations upon this subject. I repeatedly, and I believe always, told Mr. Lovejoy, that it was within the province of any citizens to organize such force, if they deemed it necessary, that they could do it, if they pleased, at any time. Mr. Lovejoy stated to me that they wished to organize their company under my sanction in an official capacity, and asked me if I would give such sanction. I told him that I could not, and explained to him the reason why I should feel bound to withhold it. I told him what the provisions of the law in regard to the formation of such companies were ; explained to him the mode of proceeding necessary to be followed in the organization of their company. Subsequently to this, loaned my law books to some one, who, I understood was to join the company.

Mr. Gilman, in an interview shortly after, told me that they had organized a company, and had put themselves under the command of William Harned: he tendered me the services of the company, and said that they would at all times hold themselves in readiness to obey any commands I might issue. I replied again, thanking him for his readiness to act, so often expressed, and told him that whenever the time should come in which I should think the occasion would warrant me to call for their services, I should unhesitatingly do it.

On the night of the 6th, or rather the morning of the 7th of November last, at about 3 o'clock, Mr. Gilman and Mr. Roff came to my room and called me up. They stated that the press was coming, that the boat was in sight coming up the river, and that Mr. Moore was upon the boat and had charge of the press; that arrangements had been made to have it safely landed and stored that night, and they requested me to go down and be present at its landing, so that, in case of difficulty or disturbance I might be there to suppress it. I got up, dressed as quickly as I could, and went down to the river. I stood at Mr. Gilman's warehouse while the boat was nearing, and till she landed. I did not go on board, I think. The hands of the boat put the press on shore and removed it into the warehouse. I think I did not have conversation with any one but Mr. Gilman at this time. After the press was stored, I went up into the warehouse. I found some twenty or thirty people assembled: they were all armed, and again offered me their services in aid of the laws. I told them, as I had repeatedly before, that at the time I did not see any occasion for their services, but that if occasion should arise when their services should be needed by me, I should not only call for, but should expect to receive their assistance. On the 6th Mr. Gilman called upon me at my office,—he introduced, as matter of conversation, the subject of the rights of citizens to defend their property. We had a long conversation; I gave him my opinion

upon the subject ; I think I read the law, and explained to him its principles ; I do not know whether he asked my advice as Mayor, as lawyer, or as a friend and citizen. I did not consider that I was then advising him as Mayor ;—in the course of our conversation we spoke of our municipal regulations ; I told him I thought they were exceedingly deficient, and I believe I mentioned in what particulars. He asked me if I would appoint special constables ; said he apprehended danger to his property ; I told him that I had no authority to make any such appointment, that I would cheerfully do all I could ; that the Council would meet that day, and that at their meeting I would lay the whole matter before them. When the Council met, I did make the application, but I did not recommend in terms the appointment of such officers ; I left the whole matter to the action of the Board. I was absent at the next meeting of the Council when the Records were read, or I should have noticed the mistake in the record, and had it corrected.

On the evening of the 7th of November last, Mr. Gilman and Mr. Chappell called at my office. They told me they apprehended an attack would be made upon the warehouse, as they had understood the mob were determined to destroy the press ; that a number of armed men had assembled and were then in the building for the purpose of defending it, and that they had come to the resolution of remaining there, and defending it at all hazards ; they asked me what I thought of their determination ; they spoke of the rumors they had heard in regard to the determination of the mob to destroy the press. At that time, all was quiet in the city, so far as I know, and I had but a little while before been in the streets, and observed nothing which led me to suppose an attack was meditated. I did not believe an attack would be made. I had exerted myself that day as much as I was able, and had endeavored to get all the information which was possible. People seemed to shun me, and were

very reluctant to communicate with me at all, and I could succeed in getting no information which should have induced me to believe any design to destroy the press was meditated. Mr. Gilman asked me what I thought of the armed men who were in the building, remaining there for the purpose of defending their property. I told him in my opinion they had an undoubted right to be there,—that they might rightfully remain there, and that they would be justified in defending their property; I did not understand them as making this application for advice to me, as Mayor. Mr. Gilman stated to me that they were well prepared with arms; that they should remain there during the night; that they were fully determined to defend the press and the building; and that if the attack which they apprehended was made, they wished it to be understood that their services would be ready to execute any order they might receive from any civil officer. I replied to them, that if the emergency should require the aid of armed men, I should not hesitate a moment in commanding the men who were assembled there to suppress the riot, but that I should be the sole judge of such an emergency. He repeatedly asked me what I thought of their being there. I never ordered any man to repair to the warehouse; but in every instance, I was informed that they had already repaired there. Mr. Gilman repeatedly told me, that all he desired was to act under the authority of law, and the civil officers. After Mr. Gilman left, I remained in my office till between nine and ten o'clock. I stepped in to Dr. Hart's office at that time, and while I was there I heard a number of people passing by,—there were from fifteen to twenty. I immediately came down stairs. I recognised two of the crowd; one of them had a gun. I got my overcoat, prepared myself, returned to the street, but saw no one. I came down to Mr. Robbins' office, sent for Judge Martin and other civil officers, and waited some time for them to come. Mr. Robbins and myself finally started together. As I was going down the stairs I

heard two reports of firearms ; from the sound I thought they were pistols ; the reports seemed to be low. I soon heard another which I took to be a gun. I hastened up, and soon saw people carrying a man,—it was Bishop. I stepped up to them and asked if any one was hurt ; they replied yes, one of our men was shot. I asked if he was much hurt ; they said they thought not. They seemed very much excited. I endeavored to persuade them to disperse. A crowd gathered round me ; I addressed them, and used all the means in my power to induce them to disperse. I asked them what they intended to do. They said they were determined to have the press. Some one proposed that I should let those inside the warehouse know that they wanted the press ;—that they would have it at all events, and said they would retire while I went in and communicated their determination. I acceded, supposing that if we could once get them scattered, the excitement would subside and we could then control them. They retired ; I went to the warehouse ; Mr. Gilman opened the door and let me (with Mr. Robbins and I believe Mr. West also) in. He, Mr. Gilman, asked me how many outside were injured, if any. I told him there was but one injured, so far as I knew, that there were but few outside. I then told Mr. Gilman what the mob said they wanted, and the determination they had expressed, and I also stated my impression, that when I went out we could control them. I staid in the warehouse some time purposely, longer than I otherwise should, in order that the excitement should subside, as I had no doubt it would.

While in the warehouse, I went up on to the second floor. I saw there Gilman, Lovejoy, Walworth, (I think, but am not positive,) Long, Hurlbut, and some others. I think I saw some arms about the walls. Gilman, Long, and Lovejoy, had guns in their hands. Gilman told me that two or three guns had been fired from the house. Deacon Long asked me if they were justified. I replied, most certainly ; I thought they

were. My impression was that we should be able to quell any further disturbance, when we went out; and I so expressed myself. I had no idea any further attack would be made.

Question by W. S. Gilman.—On the night of the 6th, when I called you up and you went down to the warehouse, did you not go into the building before the press was landed? *Ans.* Yes, I believe I did, I think I did.

Q. Did you not ask me to go out, and did I not go out, and did I not stand by your side on the wharf at the time the press was landed? *Ans.* Yes, you did.

Q. When the press was landing did I not ask you to go down and receive it, and did you not say that as I was the owner, I had better go down and receive it, and you would be by my side?

Ans. There was a proposition of that kind made, and I believe I made it; I thought as you owned it, you ought to be there to receive it when it was landed.

Q. Did you not tell us we had better not leave the warehouse, not even to go to our meals, without some being there to guard it?

Ans. I think I told you you had better keep a guard there, or something to that effect.

Q. Did I not seem anxious to know what to do?

Ans. You did; you appeared anxious that whatever was done, should be done under the sanction of the civil authority.

Q. What course did you say you should take in case the press should be attacked?

Ans. I told you that if there was any danger that the people should attack the press, I should order them to desist, and should warn them of the serious consequences which would follow any attempt on their part to disturb or destroy the press.

Q. Did you not say that if the press was attacked, you should first order the mob to desist, and that if they persisted, you should then order us to fire?

Ans. I believe I did; I said I should if it became necessary.

Q. Did you not at this time consider you appeared there as Mayor?

Ans. I did.

I once agreed in one of the interviews I had with Mr. Gilman, to appoint Capt. Harned as special constable at his (Mr. Gilman's) request; but afterwards, upon an examination, I found I had no authority to make such appointment. I did not consider the armed force at the church, or at the landing of the press, as organized under my authority.

I have lived in the city for nearly five years. Godfrey & Gilman built the warehouse which was attacked; it has been in their possession ever since I have known the place.

I heard no noise in the warehouse on the night of the 7th. I saw but few persons there; saw Mr. Gilman first on the lower floor. I saw Mr. Long, Lovejoy, and Hurlbut, and I presume others, but don't recollect who.

I know Mr. Gilman to be an orderly citizen. I gave no orders while I was in the building, either to Gilman, or any one else, restraining them from firing, or doing any thing else. I saw no occasion for doing so. I thought they had a right to do as they were doing. When I went out, I commanded the people assembled there to disperse. If I had seen any thing riotous on the part of those in the warehouse, I should have ordered them to desist; I should have commanded them to disperse. When I first went up, the front of the store had been broken in. Some shot struck my hat while I was addressing the crowd. The guns were fired on the outside of the building, and, I thought, from the southeast corner of the warehouse; there were three guns fired at the people who were raising the ladder to the warehouse. I supposed the shot which reached me, were fired at them; and I afterwards ascertained that I stood about in the direction.

The two first discharges were from the outside, and they were the first which were fired, I think.

Question by Defendant's Counsel.—From all the circumstances in the case, have you any doubt that Mr. Gilman, in what he did, supposed he had your sanction? *Ans.* From all the circumstances, I am induced to believe that Mr. Gilman supposed he was acting under my authority. While I was in the storehouse, some conversation took place about the right which a man had to defend his property. I uniformly told them, that they had a right to be there. I told them they were justified in defending their property; but I told them so as a lawyer. While I was in the warehouse, I told them, that if they were out of doors, I should command their aid in suppressing the riot; but that I could not command them while they remained there.

Cross-examined.—While I was in the building, I gave no directions to those inside, as to the mode of resistance they should adopt. I considered that they acted upon their own responsibility; but I gave them my legal opinion. I took the message which the mob requested me to take, and communicated it to those inside. I told them that the mob swore they would have the press, at all hazards.

Gilman replied, that they had resolved to defend the press at the risk of their lives, and that they could not give it up. I saw Gilman, Lovejoy, Hurlbut, and Long, and I recollect of no others now whom I saw with guns.

In my remarks to the mob, I returned the language of G.; I spoke to them of the dangers they were in, the laws they were violating, and the penalties they were incurring by the breach of those laws.

Question by Linder for Government.—Did Mr. Gilman ever tell you what principles that press was intended to advocate? *Ans.* I don't think he ever did. He once told me that it was not determined whether the press should be established here, or at some other

place. I don't know that I ever heard Gilman say any thing about keeping Mr. Lovejoy here, or persuading him to go off. I never did confer upon those who were inside any authority to assemble, or give them any order to fire upon the people outside. I endeavored in the interviews I had with Mr. Gilman to explain to him the law.

Question by Linder for Government.—Did you ever state to Mr. Gilman that he could not resort to violence, unless under the direction of an officer of the law? *Ans.* I don't think I ever did. I told him that every man had a right to defend his person, and property, and to use violence if it was necessary; and that each man must judge of his extremity. I repeatedly stated to him that whenever a case presented itself, where I thought the emergency required it, I should not hesitate to call upon those men, or any other, to aid me in maintaining order; but I thought it must be an extreme case which would justify such a course. I advised Mr. Gilman, in case of any disturbance, to address the crowd in the first place; I thought he took a correct view of the matter. I told him what course I should probably take, if I was placed in a similar situation; but in all instances I advised him as a friend, and a citizen, and not as an officer. I might have been desired to remain in the building at the time I went in, I think I was, and that I replied, that I could have more influence with the crowd out of doors. At the time I addressed the crowd, after I came out of the warehouse, I think I stated to them, that unless they dispersed they would be fired upon by those in the building. If I recollect right, the mob made no reply. They advised me to get out of the way and go home.

Question by Defendant's Counsel.—At the time you stated to Mr. Gilman and others, that if they were outside you should command them to aid you, was any proposition made by any one for them to go out?

Ans.—There was no proposition made by them, or

to them, to go out of doors. They expressed their readiness to obey any orders I might give them.

Question by Linder for Government.—Did you give them any orders?

Ans.—I did not.

Samuel J. Thompson called and sworn.—I was in the warehouse on the night of the 7th of last November. Before the mob assembled Mr. Gilman spoke of sending for the Mayor. Something, I don't recollect what, prevented at the time. The mob assembled before the matter was arranged, and he was not sent for that I know of.

Cross-examined.—I was one of those inside the warehouse on that night.

Q. Was you a militia man? *Ans.* No, sir, I was in the regular service, such as I hope to be always in. I was there all the time. I do not know who shot first. I was stationed towards the river, and the stones rattled so that it was difficult for me to tell whether a gun was fired or not. The first gun I heard, was fired from the outside. I don't know whether it was the first which was fired or not. There were three or four guns fired before the cry was heard that Bishop was dead. I never saw Bishop. It was remarked inside, that they were sorry to shoot any one, and that they hoped this would put an end to the attack. Some of the guns were loaded with fine, and some with buckshot. I had a gun, but did not fire it. We had resolved to defend the press at the risk of our lives. The thought never entered our minds that the mob was as bad as it turned out to be; and therefore, we did not prepare as we ought to have done. I should myself act differently again. I remained in the warehouse till the mob left it.

Question by Linder for Government.—Whereabouts were you? *Ans.* I was all over the house, from the garret to the cellar.

Question by same. Did Mr. West find you there? *Ans.* Yes, sir.

Q. And the Mayor? *Ans.* Yes, sir.

Examined again by Defendant's Counsel.—I supposed I acted under the authority of the Mayor. When the Mayor came into the building he was asked if we had done right in firing; he replied, Yes, perfectly. The Mayor and Mr. Robbins both said that the mob were determined to go headlong and get the press at any rate. I do not use their expressions. The Mayor was asked to remain. He said, No; I can do more good on the outside, or I would. The understanding we had among ourselves was not to fire until we were fired upon. We did not fire until we were attacked, and guns were fired.

Linder for Government.—I now move, your honor, to reject this evidence. This witness, by his own showing, is equally guilty with those indicted. He is *particeps criminis*; and one standing in such situation can never testify in favor of his fellow criminals—cannot be permitted to give evidence, where such evidence goes directly to exculpate those with whom he was associated in the commission of an offence—shall not be permitted to swear away the guilt of his co-actors in crime.

Cowles for Defendant.—This seems to me a strange course to pursue, and a singular time to adopt it. The evidence has gone to the jury; it has had its effect; it has produced its impression, and if the evidence *could* be withdrawn from them, what course will the Attorney General point out, by which its effect can be withdrawn, or its influence removed? And it is too late to take the objection now. If it was to be made at all, it should have been made long ago. But the government has sat still and permitted it to go to the jury, and because the witness has disclosed some rather unpalatable facts, they now start up with this wild proposition. We had a right to presume that the evidence was given in, not much to the satisfaction, I acknowledge, but surely with the full consent of the Government. The presumption of law is, that if a party sits by, hears evidence improper in its character given to a jury, and

does not object, that he has no objection; or having any waives it. It is a fair presumption that it was given in by his consent, if he do not make his objection at a proper time. It is so decided by the Supreme Court, in the case of *Suyder vs. La Frambraise*, and this is the first time it has ever been controverted. Suppose the present defendant is convicted under the indictment now pending; and suppose he discharges such penalty as may be imposed, will the Attorney General say he would be incompetent to testify upon the trial of the remaining individuals, included with him in this indictment? Surely not; and yet he would stand before the jury, not only a criminal, but a convicted one. And if Gilman would be a competent witness for individuals over whose heads this indictment still pends; whose guilt or innocence is yet to be passed upon; why is this witness to be excluded upon this trial? 'Tis true a witness cannot be compelled to criminate himself—cannot be forced to disclose facts, which if disclosed by him would enable the Government to convict him. But whose privilege is this? to whom does this right belong? To the witness introduced, and to whom the question is propounded, and from whom the evidence is sought to be obtained. But, if a party chooses to disclose facts which may be injurious to himself; if a witness voluntarily discloses his participation in an act which is criminal;—who suffers? who is injured thereby? The Government? Not so. They gain, in this way, the disclosure of the crime, and the knowledge of the criminal. The witness? Not so. He waives his privilege, throws from him the shield which the law has furnished him, and thereby braves the danger, and seeks the liability.

Per Curiam. The motion cannot be sustained. An accomplice not indicted with others who may be on trial, is a competent witness, although he cannot be compelled to give evidence against himself. The rule is, that the objection only goes to the credibility of the witness; and if such testimony is not corroborated by

the testimony of other credible witness or witnesses, it is not entitled to full credit. The witness is competent, and the jury must judge of the degree of credit to be placed upon the evidence.

The defendant here rested, and proposed submitting the case to the Jury without argument, but the proposition was declined by the Counsel for the People.

For the People.—Mr. Murdock rose and said: Permit me, Gentlemen of the Jury, before I proceed to the argument of the case, publicly to express the pleasure I felt while listening to the testimony of Mr. Krum. The eloquent, candid, but indignant manner with which he repelled the often repeated story of inefficiency and indecision in the discharge of his important and highly responsible duties during the trying events which have given our city such unenviable fame; and his satisfactory detail of the measures recommended and adopted, must have given gratification to all his friends. And if any thing that I may have said tended to confirm public opinion in the truth of reports so prejudicial to him, I feel called upon by every gentlemanly consideration, in this public manner to confess the charges to be unfounded, and that he stands before this community in the character of an efficient and upright Mayor.

I regret, Gentlemen of the Jury, that in the discharge of my duty to the people, I am called upon to animadvert upon the conduct of men for whom personally I entertain the highest esteem. In every relation in life the defendant possesses as high claims upon our regard as any other individual in the community. Gentlemanly in all his deportment; strictly moral in life, and enterprising in business; few men possess to a higher degree, or deserve, the respect and confidence of their acquaintance, than the defendant, Mr. Gilman. But, gentlemen, he has been charged by the Grand Jury of the city, with a violation of the laws of the State, and no matter how wealthy he may be—how useful as a citizen—how pure and unoffending in the

general course of his conduct, if guilty of the offence charged, it is your duty to say, by your verdict, that neither the rich and good, or the poor and profligate shall violate the law with impunity. It is the palladium of every thing dear to freemen. It is lamentable, gentlemen, to consider the excesses to which fanaticism, in the name of our holy religion, often drives the best and most intelligent men. If the defendant had been led by the dictates of the religion he adorns, if he had consulted the precepts of that Divine Master, whose professed disciple he is, how different would have been his conduct, amidst the appalling events of the 7th of November last! Did he, who is God alone—did he, when nailed to the cross, curse his cruel persecutors, and die? Did he oppose violence to violence? And yet, gentlemen, the defendants thought themselves justified by the religion of the Saviour. It is humiliating to man, to think how weak we are,—how liable, with the best intentions, to err. The warmth of his heart, his benevolent zeal for the good of the oppressed of his fellow men, will extenuate, but cannot wipe away the guilt of the defendant.

But, gentlemen, this is a question of law;—Is the defendant guilty or not guilty? The facts no one denies—they are fully, clearly made. Do they constitute crime is the question. I will not deny that at common law every individual had the right by force to repel a forcible entry into his house, nor will I deny that he had a right to assemble his friends to aid him in so doing—but is it so in Illinois? has every one this right here? is it one of those natural rights which no law can deprive us of? If it is, gentlemen, then our statute is a dead and useless letter. It was manifestly the intent of the Legislature to change the common law, to abridge the right of defending one's domicile, to an orderly and peaceable resistance, free from violence and tumult. If the defence of property by means of firearms be not a "violent and tumultuous" defence, can any acts constitute the offence? It is the

manner in which the defence is made, not the defence itself, which constitutes the crime. We must give the statute its natural and evident import. It may be that the defendant supposed he was acting under the authority of the Mayor; but is this a justification? The Mayor cannot legalize an illegal act—he cannot give a warrant to commit crime. His office is to maintain law, not to give authority to violate it.

Few states, gentlemen of the jury, have a criminal code so severe as our own. Its provisions, if carried into effect, are amply sufficient to protect the property of our citizens, or to punish the lawless destroyer; and it was the duty of the defendant, as a good citizen, to have fled to it for redress of his injuries. The Legislature intended by the severity of its enactments to manifest its design to throw around the rights and property of our citizens ample protection, or to punish rigorously its violations. To the law then the defendant should have resorted for redress: he should have reflected, that in our day and country a rabble cannot long hold the ascendancy: that soon a returning sense of propriety will come over the people: that so soon as reason has time to exercise her power, unaided by passion, that love of order, that respect for law, that regard for the rights of others which distinguish Americans, would have exerted their influence over our misguided citizens.

I need not say to you, gentlemen, how much I deplore the tragical event, the details of which you have been so long listening to. It has exerted, and will continue to exert a baleful influence upon our prosperity, and worse, upon our good name. But the evil has been committed, and gone forth to all the world, to blacken the page of our history; it is your proud duty, your high power, to do much to soften the coloring. And how, but by the fearless execution of the law? I will not, gentlemen of the jury, trespass longer upon your time, exhausted by the extended examination of testimony. I resign the case to the able counsel who aid me in the prosecution.

Remarks of George T. M. Davis, upon the defence of W. S. Gilman.

Having, for the last fortnight, gentlemen of the jury, been confined to my room with indisposition, it is with a perfect consciousness of my own inability, (increased from feebleness) to do justice to my client that I attempt to address you in his behalf; and were it not that I am to be followed by other, and far more able counsel, you might indeed charge me with arrogance and presumption in making an effort in his defence. I must consequently throw myself upon your kind indulgence for the few moments I shall occupy in taking a cursory view of the testimony in this cause. Fortunately for my client, gentlemen of the jury, we have been enabled to sever him from the other individuals who are included in the indictment with him; neither to you or to the prosecution, is it any matter what motive prompted the application; it was a right secured to him by the law; a right which was deemed valuable in its exercise, and which was properly granted us by this court; you have, therefore, only to inquire into the guilt or innocence of my client, without regard to the others who stand charged in the same indictment with him.

I know not, gentlemen, hardly why I stand here; how it is that I am called to defend Winthrop S. Gilman, upon a charge of violating the laws of his country. I can hardly reconcile to myself the fact that I am here to defend, and you there to try this individual for an alleged crime; a man who in all the relations of life is respected, beloved, and honored, who has proven the most dutiful of sons, the kindest and most affectionate of husbands and fathers, the most faithful of friends, the most valued as a neighbor and citizen, honored as a public benefactor, and whose memory will be cherished in grateful remembrance for his many acts of private and public benevolence, while that of his persecutors will have been forgotten, or only spoken of with pity and contempt. The best evidence in the power of my

client to offer you of his confidence in the purity and uprightness of his motives, the innocence of his acts and the justice of his cause, and of the integrity and impartiality of those by whom he is to be tried, is that he has committed his defence to the hands of a junior counsel. In that confidence, gentlemen, I most fully participate; but it would be criminal in me were I to deny that I enter upon the discharge of my duty with the liveliest solicitude, for it is neither the evidence or the law, nor the strength of the learned and able counsel that is to enforce it, that we are to contend against. No! we have other and more formidable antagonists; it is the rumor which has floated, the prejudice which exists, and the calumny which has been so industriously circulated throughout this community previous to this trial. You will therefore pardon me when I assure you, that I am not without one lingering apprehension as to the safety of my client, and that is lest you should have unconsciously imbibed that poison which has been so widely diffused; but when I say this, let no one of you understand me as casting the least doubt upon either his integrity or his judgment; in both I have the most unlimited confidence, for I know you to be upright, intelligent, and honest; but you were created men before you were appointed to be jurors, and we tremble lest in your hearts you entertained prejudices which may have been imbibed in ignorance, but now cherished almost as virtues. I ask you, therefore, gentlemen, to make a strong effort to rise above all extraneous considerations, and divesting yourselves of every thing like prejudice or partiality, to give to the testimony and the law, applicable to this cause, a fair and candid review, and see if you will not be warranted by both in arriving to the same conclusion that we have; that the defendant acted under a fair and honest conviction that he was doing right; that he was in the discharge of his duty to himself in defending his property, and his duty to his country in maintaining her laws. Let me then call your attention in the first place to the indictment, which con-

tains two counts. In the first you will perceive that the defendant, with others who are therein named, is charged with having "*resisted and opposed* with force and arms, violently, tumultuously, and unlawfully, an attempt of certain persons unknown, to break up and destroy a printing press, *the property of the said defendant*, and one Benjamin Godfrey." By the second count, the offence is somewhat varied, and the prosecution have charged that he, with certain other individuals, with force, unlawfully, and in a violent and tumultuous manner, "*defended and resisted*" an attempt then and there being made by divers persons unknown, to break open and enter a storehouse of *the said defendant*, and Benjamin Godfrey. Thus you will perceive that the government have alleged that the property was in us, and that the defence was made for the protection of our own rightful property ; and all the offence for which my client is here arraigned, and for the trial of which you are there empannelled, consists in the fact that he found it necessary to use force and arms in his own defence, and that defence was made in a violent and tumultuous manner. All, therefore, gentlemen, that you have to inquire into is, the *manner* in which this defence was made ; this is the true issue before you, and upon it the acquittal or conviction of my client must rest. The people have charged us with making this defence in a violent and tumultuous, and therefore in an unlawful manner ; we reply, and we ask you from the testimony to believe, that there was no tumult on our part—that the violence we made use of, was but proportionate to the attack we were compelled to resist, and necessary to our protection, and therefore justified ; but before I proceed to consider the grounds of our defence, let me say to you what in my opinion it is necessary for the prosecution to show, before they can ask you to convict this defendant—they must prove to you the time when, the place where the act was committed, and that the manner in which the act was done was tumultuous. Have they done so ? Have they shown *this defence*

and resistance of which they complain to have been made at the time and in the place alleged? Who has sworn to it? Who has told you when? Who has told you where? What witness has proven to you that this transaction took place within the Corporate Limits of the City of Alton? I call upon the two learned gentlemen who are to reply to me, to answer; and to name if they can that individual who stated in his testimony before you, that the offence charged was committed in the City of Alton. If each and every one of these facts are not distinctly and unequivocally proven, the foundation of this prosecution fails and the whole superstructure must tumble to the ground; for unless this offence was committed within the Corporate Limits of this City, neither this Court or the Grand Jury who have presented this bill have any jurisdiction of the matter. Remember you are sitting in judgment upon the liberty and reputation of a fellow man, and the law requires you in the discharge of your duty, either to acquit or convict from the testimony that is adduced before you; you are not to arrive at any fact by deduction, and because the government prove to you one circumstance you are not therefore to presume another; it therefore lies with the prosecution to show you that each allegation in their bill is true, and if they have failed so to do, you, from any knowledge you or either of you may possess separate and distinct from the testimony, cannot supply it; you are there as judges of crime from the facts proved; as jurors, you can nothing of yourselves, for you are not brought here as witnesses, but as impartial men selected to stand between my client and the prosecution, and sworn to try the issue upon the law and the facts as submitted to you. If therefore in your opinion the people have failed in proving any material allegations in their indictment, no matter how unnecessary it was that they should have made them; I claim the benefit to be derived from such omission. I waive no right, I release no error, I admit nothing that is not proved; standing upon all my rights-

I ask at your hands an acquittal of my client, not indeed through the imperfection of the testimony upon the part of the people, but upon the merits ; admitting them to have proven all they were bound to before you could convict ; but, gentlemen, whatever your verdict may be, the defendant will go hence as he came here, with a pure conscience. Yes, in the sight of God, in the sight of the world, he can lay his hand upon his heart and fearlessly avow his innocence. Your verdict may indeed stamp upon him the semblance of guilt, you may declare that his name shall be enrolled upon the records of this court as a felon, you may doom him to unmerited punishment and consign his person to a dungeon within the walls of your prison. These things in the exercise of our power you may do, but you cannot take from him an unsullied reputation, a high and unimpeachable character for honor and integrity ; you cannot disturb him in the possession of a conscience free from stain, from pollution, from guilt, a conscience void of offence towards all mankind.

In the further remarks which I shall make to you, (for I already perceive that my strength fails me,) I shall scrupulously abstain from allusion to the events of the exciting past. I shall not recite to you the dreadful, yes ! the fearful scenes of the memorable night of the 7th November—memorable to all after time as a period when men could be found to throw away life in an attack upon another's property—and when your streets were crimsoned with the blood of those gallant and undaunted few who had rallied for its defence ; nor shall I ask you to travel with me in imagination onward to the future and conjecture the consequences of your verdict—the good or the evil to this community and to posterity, as you may uphold law or sanction licentiousness ; far be it from me unnecessarily to recur to an event which has made us as a people a bye-word and a reproach to the whole Union ; but on the contrary, would to God that by any act of mine I could pour upon the troubled waters of this excite-

ment the oil of reconciliation—and could restore to this once happy and united people that peace and unity of action with which but a few months since they were blessed; but I cannot do it; the seeds of discord are too deeply sown to be uprooted by human effort, and time can alone allay the raging of those worst passions of the human heart which to us has been attended with such lamentable consequences. I stand here, gentlemen, solely for the purpose of interposing the shield of the law as a protection to a man innocent of the crime alleged against him—not to screen the guilty. I have shut no fact from this jury—have objected to none of the disclosures which have been made—resolved from the beginning the whole facts should appear in this investigation whether it made for us or against us; to you they have been given fully, clearly, and I have no doubt impartially; and I am perfectly willing that my client should be judged by you and by the world—by the development that the witnesses have made; and I commit into your hands his case with entire confidence in the issue. But the prosecuting Attorney has read to you a section of the criminal code of this State which he contends regulates the *only manner* in which a citizen shall defend his property; and one would almost think he had worked himself into the belief that the inalienable right of defending one's person and property was not a natural right founded in nature and sanctioned by law; but that in compassion to human frailty the law had kindly permitted its occasional exercise, provided that when exercised due regard was paid to all the forms and ceremonies prescribed in your statute; but I care not what the criminal code of Illinois may be; I care not what is contained therein, provided it is in violation of the Constitution of this State or of the United States. Such, gentlemen, I contend is the fact in this case; I aver before you, fearless of contradiction, that the extraordinary section of the criminal code under which the City Attorney seeks to convict my client is in direct violation of the Constitutions both of the

United States and of the State of Illinois ; and as you are in criminal matters the sole judges, both of the law and the facts, and by your verdict must determine the correctness or fallacy of my position, I will call your attention to the 5th Article of the Amendment to the Constitution of the United States, which declares that "no person shall be deprived of life, liberty, or property, without due process of law." I turn then to your own Constitution, which in the 1st section of the 8th Article declares, that "all men have certain inherent and indefensible rights ; among which are those of enjoying and defending life and liberty, and of acquiring, possessing, and *protecting* property and reputation ;" and in the 8th section, same article, that "no freeman shall in any manner be deprived of his life, liberty, or property, but by the judgment of his peers or the laws of the land." I call your attention gentlemen to these sections of the two Constitutions, and leave them for your consideration without further comment, satisfied that with me you will agree that the Legislature of our State in the enactment of this law have violated (unintentionally) the Constitution both of this State and the United States. Having in my humble opinion disposed of the law satisfactorily to you, to which the prosecuting Attorney has called your attention, and upon which he relies to sustain this indictment, the only question, gentlemen, now left for you to determine is, whether Mr. Gilman on the night of the 7th November last, was or was not employed in the exercise of his constitutional right in resisting an unlawful attack upon his property and an attempt to take his life. The indictment charges the fact that he was engaged in defending a certain printing press then being in his warehouse ; and the prosecuting Attorney since the commencement of this trial has seen fit to insert in the indictment that the said printing press was the property of my client and one Benjamin Godfrey ; to accommodate him, therefore, and in order that he may sustain this *inserted allegation*, we admit the ownership and

claim the allegation as a true one. Let me now for a single moment recur to the testimony, and see if it does not clearly and unequivocally show that Mr. Gilman in every instance on the night of the 7th acted only on the defensive, and that too after he had used every persuasive means in his power to induce the belligerents to retire. Mr. Keating, the first witness introduced by the prosecution, swears that he heard of the intended attack upon the warehouse of Godfrey & Gilman, and that the rumor was, that the same was to be blown up or burned, provided the press stored in it could not be obtained by other means—that in the forepart of the evening, about a half or three-quarters of an hour before any attack was made upon the building, he and Mr. West went to the warehouse of Mr. Gilman with a view of informing him of the attack and the consequences that would result from it—that they did communicate to him the intelligence, and that he expressed great astonishment—that he was unprepared and did not expect an attack that night—that he replied he could not believe the citizens of Alton would stand by and see such a thing done—and that he requested Mr. West to proceed to the Mayor's office and request him to rally the law-abiding portion of the community in order to suppress the riot. He further states to you, that shortly after he left the building the mob assembled and made the attack by dashing in the windows with stones, and that before any gun was fired from within, a gun and a pistol had been discharged on the outside by the mob, and that not until the assailants had twice fired did those within resort to their arms for the protection of their lives. Mr. West, who was the next witness on behalf of the people, also fully and in every respect corroborates the testimony of Mr. Keating, and tells you further, that John Solomon called upon him early in the evening and told him he (Solomon) *knew* that Mr. Gilman's building was to be blown up or burnt up that night if the press could not be had, and urged Mr. West to inform Mr. Gilman of the same.

Thus you will perceive, gentlemen, that the property (valued at thousands of dollars) and the life of my client was coolly and deliberately determined upon by the mob some two or three hours at least before their attack upon the warehouse of this defendant. Can you then doubt, if the witnesses for the prosecution have testified to the truth, who were the assailants? Can you for a moment doubt but that the firing commenced first with the mob; and that it was their fixed and matured determination not only to destroy the property but the life of my client and his associates? If then the attack was first made from without both with stones and firearms, and the assailants had coolly determined upon blowing up the warehouse and its eighteen inmates, do you believe the defence that was made by my client was disproportionate to the attack? do you believe that it was greater than any man in the exercise of his reasoning faculties would have adopted? If you do not, I then in behalf of this defendant place myself upon my reserved rights—I plant myself upon the rock of the Constitution—I interpose before my client that instrument as his shield; and protected by its letter, guarded by its spirit, I bid defiance to the statute the prosecutor has produced, and laugh to scorn the indictment he has read to you.

But if, gentlemen, I have failed to satisfy you upon this point, I ask you to grant me your indulgence a moment longer, while I take another view of this case. It is in evidence before you that Mr. Gilman repeatedly sought, from the Mayor of our City, authority to act as he was at last compelled to—that frequent and long were the interviews had with the Mayor upon that subject—and that he had stated to Mr. Krum, that he was anxious that whatever act was done in the protection of the press, should be done under the sanction of the law, and by virtue of authority derived from an officer of the law; that on the night of the 6th, just preceding that of the riot, the Mayor was present in his official capacity at the warehouse of my client, and that,

upon the question being asked him what course he intended to pursue if the attack should be made while lauding the press, he replied, he should order the mob to disperse, and warn them of the consequences if they did not ; and that, if they then still persisted, and his injunctions were disregarded, he should peremptorily give Mr. Gilman and his associates orders *to fire upon the assailants*. But again, we have further shown to you, that on that night after the press was landed and placed in the warehouse, the Mayor advised, or assented, to an arrangement, by virtue of which that warehouse and that printing press was to be guarded by those whom he knew had assembled for the avowed and isolated purpose of protecting it. We have also shown to you, that on the night of the 7th, which resulted in the loss of two lives, when the Mayor went into the building, at the solicitation of the mob, to endeavor to persuade those within to give up the press, and after the death of Bishop had occurred, he was then and there again interrogated by Mr. Gilman, whether he had acted under the authority of the law, and was justified in what had been done, and that to such inquiry Mr. Krum replied in the affirmative ; and although the Mayor unqualifiedly testified that such advice was given Mr. Gilman as a citizen and a friend, and as one, who, from his profession, was conversant with the law and the rights of my client under it, and not in his official capacity as Mayor, he has, nevertheless, also stated to you, that from the knowledge he possessed of all the facts, he did believe that Mr. Gilman *supposed* he was acting under his official authority. And is it not natural, gentlemen, that he should have so supposed ? In all these interviews had by him with Mr. Krum, the uniform advice given him was, that defence might lawfully be made, and that if requisite for completing that defence, firearms might legally be resorted to, and even life taken, and that the act would be justified by the law. Why, let me ask you, should Mr. Gilman, Lovejoy, and others, hold these *repeated interviews* with Mr. Krum ? If they sought

his advice merely as a lawyer, or a friend, or a citizen, would it not have proven sufficient for them that he had given it to them, clearly and unequivocally, during the first interview? Why these constant applications to him at every step they took, and why this great solicitude on their part to have their every act sanctioned with his approbation? The reason is a most obvious and irresistible one: it was because he was the highest civil officer within their reach; clothed, as they believed, with full power to grant them the authority subsequently exercised by them, and because they were anxious and determined that nothing should be done on their part, in the way of resistance or defence, unless under his authority and with his consent. And then, too, (that this matter may be placed beyond any doubt as to the firm belief of my client that he was acting only the part of a subordinate to the Mayor,) let me recur to the conversation in the store, after Bishop's death. When an application was made to him to remain on the inside with them, what was his reply? "I would if I did not think I could do more good out of doors." Did he then disclaim all connection with them in his official capacity, and give them to understand that they were acting without his authority, and upon their own responsibility; or was his reply such as to leave them under the conviction that they were acting under the authority of the law? To my mind this combination of facts is proof most conclusive, that this defendant, naturally, fairly and honestly supposed he had the authority of that officer for his every act; and if you, gentlemen, should so also believe, even though you wholly disregarded his constitutional rights, you are then bound to acquit him, for it negatives most fully every idea of a *criminal intent*, and without which no man can be convicted of crime. *Never* was there a man arraigned before a jury of his country who more conclusively showed his innocence, not only in acts, but in word and thought, than has my client, and he stands before his God and the world, if the testimony in this cause can have any weight, purged

of even the shadow of guilt, and with a reputation rendered, if possible, more bright and enviable than he possessed before this indictment was preferred against him. But I fear, gentlemen, I am tasking your patience beyond endurance, and exhaustion on my part admonishes me that I must draw to a close, notwithstanding there are several points to which it was my intention to have invited your notice. I am fully sensible that I have done the cause of my client but little justice, but am consoled by the reflection that the injury I have done him will be more than repaired by the talents, the experience, and the eloquence of my associate, who will close the argument in his behalf. All that is left me to say is, that I would be doing the most gross injustice to my feelings, did I not return you, gentlemen, my most sincere acknowledgements for the patience with which you have listened to, and the attention you have given my unconnected remarks. I fear that in the course of them I may have displayed an overheated zeal and a warmth of feeling that, in your opinion, was unjustifiable ; if so, do not, I beseech you, gentlemen, let it prejudice the rights of my client. I could not avoid it. It is not by mere professional ties that I am connected with him ; I am bound to him by the strongest and most enduring ties of friendship ; a friendship which may have had its foundation in repeated and unsolicited acts of kindness, bestowed upon me when I most needed them, but which, I am proud to declare, has been matured and strengthened by a subsequent knowledge of his virtues ; and never can I bring my mind to believe that, possessed as he is of all those ennobling qualities which have rendered him a model of social and domestic virtue, he could so far have forgotten himself as to have committed the crime with which he stands charged by this indictment.

By request of Mr. Bailey, who appeared in the trial of this cause as one of the counsel for the Government, and who followed Mr. Davis in an address to the jury, his remarks are not included in this report of the trial.

Remarks of Alfred Cowles, Esq. for defendant.

Gentlemen of the Jury : the case which you are empannelled to try, is one of no common occurrence, whether it be considered in respect to its effect upon each of us, upon individual security, property, liberty and life ; upon the right of free discussion, upon the question whether the law and constitution shall be the paramount rule of action ; or whether misrule and the unlicensed will of an irresponsible multitude shall henceforth be our governing authority.

The issue of this trial is to write the character of this community in no illegible impress, but in one that will be known, understood and appreciated of all men ; it will be either of a returning sense of justice, a respect to law and the obligations of civilized society ; or a closing over of our sky with a dark and portentous cloud pregnant with future ill.

In approaching the defence of the very respectable gentleman, who stands at the bar as a prisoner and a culprit, the question of his guilt in itself considered, in comparison of other and more important results, shrinks into insignificance. In conducting his defence I feel that I am defending the supremacy of law and constitution, the sacred right of individual opinion, of free discussion, and of self defence, against unbridled lawless violence : I then, after hearing the evidence, am affected with the same surprise as was expressed by one of your fellow jurors, who on his being examined touching his qualification to sit on the traverse, remarked that he did not understand how a man could be indicted for defending his own property ; nor could I conceive how any man in the warehouse could be indicted, much less that the defendant, the builder and owner of the warehouse, and who in the legal defence of that warehouse and the property within it, in which he had a general or special ownership, could be subjected to penal consequences—but this strange attitude is exhibited in the person of the defendant—standing in defence of property, liberty and life—in which defence

the blood of an innocent victim had been shed to satisfy the insatiable passion of a lawless multitude, unparalleled in atrocity.

The very act of indicting this individual and his associates, supposes that their acting upon the defensive was criminal.

This right of self-defence addresses itself to this jury, and if by your verdict you pronounce him guilty, you deny it to the defendant, and in effect say that the armed, excited, ruthless multitude without, had the right to judge upon the individual rights of the prisoner—and to carry out that judgment to a forcible, unrestricted execution.

It is then to you that we appeal, as the barrier and rampart, behind which liberty and law may intrench itself—and against which the waves of misrule and disorder may beat in vain. In protecting this defendant you are defending yourselves, you are restoring peace and security to this much injured community.

By what tenure do we hold our property and lives, if not by the organization of society? Are we to go back to an unorganized condition and be subjected to brute force and unprincipled will? or shall we throw around us the shield of the constitution? You will answer by your verdict.

By an amendment to the Constitution of the United States, the right of every citizen to keep and bear arms is secured; the fact then that the prisoner and his associates had arms within the warehouse was in no sense criminal; especially when it appears from the testimony that they were advertised of meditated and threatened violence from without; and when the same force had distinguished itself by its triumphs over the *freedom of speech and of the press* in the destruction of other printing presses.

By the Constitution of this State, p. 45, § it is provided, "that no person shall be deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land." The violation of this provi-

sion of the Constitution in the attack upon the life and property of the prisoner is manifest; so much so, that he that runs may read; unless it be assumed that the violators of law and order were his constitutional peers!

It is proved that Mr. Gilman and his partner owned the warehouse, and received the Observer press for safe keeping on storage, and being responsible to the actual owner, had such a property in it as justified him in resisting force by force. The law knows no difference whether the property be general or special in regard to the right of defending it, or in regard to criminal liability for invading it.—*Archbold*.

But it may be argued by the Attorney General that the press, which was the object of attack and defence, was intended to promulgate principles, and discuss subjects, which many citizens repudiated; and therefore the right to destroy the press was complete! and that any means might be used to accomplish that end.

We again recur to our Constitution, at § , which provides "that no law shall ever be passed to impair the freedom of speech or the liberty of the press, and that every citizen may freely speak, write, and print, being responsible for the abuse thereof." Is this a responsibility to a mob! or to the judicial tribunals of the country, the peers of the person charged with abuse?

In this land of constitutional *immunity*, freedom of speech and the press, it is reserved for those living under that immunity, to supervise the press, and prescribe what shall, and what shall not be printed; and even whether the press in a given place shall exist! Thus arrogating to themselves a power, which only exists in acknowledged arbitrary governments! The exercise of which power is the most effective instrument of despotism; and this power is assumed by some that call themselves the democracy of the country dyed in the wool.

What but the exercise of this power in France and Germany is it, that has stifled the spirit of liberty in those countries, and perpetuated the arm of tyranny?

This interference with the liberty of the press is one that American citizens will not brook or give place to ; nor will they yield that to an irresponsible multitude, of which their Legislature could not deprive them ! This is their political ægis.

Are these reservations in behalf of the people, preserved in an American Constitution to be an idle and unmeaning principle ? And shall it be in vain that our sires poured out their blood like water, and left their whitening bones scattered in many a glorious, well fought field, to secure them ?

And shall their recreant sons yield up tamely this best of political gifts ? It is impossible, if any drop of the blood of their ancestors yet animates them, and unless "judgment is fled to brutish beasts, and men have lost their reason."

An examination of the proofs will justify most fully the accused, before this jury and all who understand the condition of those defending the property. It was a case verily of self-defence, upon the most valid and unquestionable grounds.

The arrival of the press was notorious ; in anticipation of its arrival, the prowling conspirators against the Constitution were on the alert ; and after its arrival, when the Mayor had been desired to be present at its arrival to take measures for its security, and had actually superintended its landing and deposit at Godfrey & Gilman's warehouse, at a late hour of the night a few of their dark forms were seen hovering about at a distance, and the next day developed fully the avowal of their heartless and atrocious design, which was to blow up or burn the building where the press was deposited, if necessary to destroy it. Not unapprised of such an intention from the conspirators, but being wholly incredulous as to its truth, that band assembled in the warehouse on the fatal night of the 7th, to repel if necessary any attack upon the house and property of the accused ; they were fired upon from without by at least two guns or pistols ; and showers of stones were thrown

into and against the building before any defensive act was done by those within ; and as is proved to you, such was their design, as avowed and agreed among themselves. Now can it enter into the mind of any human being, that these persons in their act of self-defence, were guilty of a riot ? Every ingredient of crime is wanting. It is apparent that no criminal intent existed in their minds. By our criminal code, there must exist a joint operation of act and intention, to constitute crime ; every act of the accused exhibited a want of criminal intention. It is true the first blood was shed by those in the defensive ; but it is equally true that it was a legitimate and justifiable consequence of their exercise of the right of self-defence. After Bishop, one of the assailants, had been shot, and those without had been stimulated and infuriated by the use of intoxicating drink, freely administered at certain houses miscalled "coffee houses," a second attack was made upon the building, and the cry was raised to fire the building. You have seen that Mr. Gilman in the most kind and conciliating terms remonstrated with those without, and avowed the determination of himself and friends to defend the property and possession at the risk of their lives, but that they had no desire to injure any one without. This reasonable intimation served no other purpose but to produce a reiteration of the design of the mob.

The Mayor with other civil officers appeared, and ordered the rioters to disperse ; this was disregarded ; and the Mayor was desired to enter the building and propose a capitulation, and authorized to stipulate for those without, that those within should depart unharmed ; and while this very negotiation was carrying on, fire was communicated to the warehouse, and those within urged to depart to save their lives and prevent the warehouse from conflagration. Mr. Gilman was incredulous, as was the Mayor ; they had no conception of the dark malignity which actuated those without. The thing threatened was incredible ! against whom ? and for what ?

Winthrop S. Gilman had been the first man to vest his capital in Alton and give it importance ; his patronage had given bread to many of the inhabitants of that town ; he had been with the town in its struggling infancy, and its palmy state of manhood ; when it had been visited by the "pestilence that walketh in darkness," before which the forms of men were shrinking and withering, he stood by a ministering angel ; and now this population were turning against him "like dogs upon the hand that fed them, to bite and devour." The dark characters of such deeds can only find a parallel in the regions below.

And for what was all this ? Merely because a disposition had been expressed to sustain and protect the freedom of speech and of the press.

The accused and his associates were among those most deeply interested in the prosperity of Alton, entire strangers to riot and to that society in which its elements consisted. There was a pledge in their character which would and ought to weigh deeply with the jury. But they had entered upon the subject after cool reflection, and their determination was not the result of a sudden ebullition of passion—but one to which their consciences pointed in fortifying approbation. They knew they were in the exercise of a constitutional right, and they felt that in that respect they would be justified. The public authorities had been previously consulted as to their right of self-defence, and had approved of the assertion of that right, in repelling force by force. But what did all this avail against a mob !—there they stood, that little band ; within that building there was no riot, no tumult ; but that deep silence which precedes great actions !—without all was tumult, uproar and violence ; upon those without the nerveless arm of the law had been exerted in vain—within, the same arm had approved and justified. Matters now arrived at a crisis ; the building was fired over their heads and they were besought by some benevolent individuals to yield to that lawless force, which they were forced to do, to

save their lives, and prevent the total destruction of the building and one hundred thousand dollars in value of property within. And yet these individuals were fired upon as they fled from the horrors of that night. And the assailants entered the citadel, and destroyed that press. Here was a consummation of all that was vile and atrocious, all that tyranny could inflict, upon the rights and liberties of a free people. The arm of the law was broken, the sword of justice trampled on, and treason was perpetrated in its fullest form. "Then you and I, and all of us fell down, whilst bloody treason flourished o'er us."

A calm review of this transaction cannot but justify the defendants—on the ground of a want of criminal intention as a legal justification. It is laid down in authors of the highest authority in criminal law, that a man may assemble his friends in his own house to prevent an unlawful entry, or to protect his property therein. 1 Russel on Crimes, vol. 1, p. 254. Hawkins' Pleas of the Crown Book, v. 1, ch. 65, p. 158. This right is by the law of nature, aside from constitutional right; wherever, as here, the civil authority is inadequate, we are remitted to our original rights. The law of civil society only regulates the mode of self-defence; when organized society fails to afford protection, we are then thrown back upon our original rights, with power to defend them, either in regard to person or property, as we best may. Gilman applied to the civil authorities for protection—it was not given. Where was the city authority in that dark hour of violence and misrule? As though it had not been. Mr. Gilman stands therefore before you, gentlemen, justified in the sight of men and of God; by all the principles that are in the human heart; by the wisdom of ages; and if you, gentlemen, can say he is guilty, pronounce such a verdict, and add to the dishonor of the country, that what a lawless mob executed, twelve men were found to justify and approve.

Linder, for the people.

I feel, gentlemen of the jury, that I have to contend against fearful odds, when I have the conviction press-

ed home upon me, by the argument of the gentleman that, as citizens you probably were influenced by the excitement occasioned by the fearful tragedy which has been acted in this city; and am reminded that, as jurors, you may not have forgotten the prejudices which you imbibed before you were sworn to try this issue. I feel that the odds against me are greatly increased, when I recollect the threats made use of to frighten you from returning a verdict of guilty, and when I remember that, in anticipation of such a verdict of guilty, you were denounced by the venerable Counsel who has preceded me, as participators in the crime for which this defendant is now on trial; as coadjutors in the treason, which was committed by those who destroyed the press. But, gentlemen, if you have feeling upon this subject you may control it: all may divest themselves of prejudice, if they are determined to do so.

You must have observed how hampered the defence has been; how the Counsel, in their remarks, crippled along. All their remarks showed that they thought they were prosecuting the outside, instead of defending those who were guilty of a riot in the inside of the warehouse. I ask you to travel along with me as I relate to you the facts in this case. Last August, the first press was destroyed: the "boys" broke it to pieces and threw it into the river. Another was brought here, and after repeated failures to establish a press by which they could disseminate their fiendish doctrines, another course was adopted. A convention was called at Upper Alton. Alton was chosen as the scene of their operations. Alton was to be made the theatre of their preachings—and all their presses, and all their preachings, and all their conventions, were to be held in the poor, devoted city of Alton. Dr. Beecher was warned to attend, and these people thought they were going to have it all their own way. But it happened that these Western boys knew a thing or two: knew a trick worth two of that; and so they got together and out-voted them, and the convention blew up in smoke. It was a

farce. Not satisfied with this ; not satisfied with the blowing up of this farce ; not satisfied with the result of this convention, headed by interlopers from other states, headed by an alien to our laws and our country, they issued their handbills, they made proclamation in the streets, of their intention to preach their doctrines in the Church. They posted up placards, notifying the world that Dr. Beecher would preach upon this damning doctrine of abolition. Now mark the course of these people ; these advocates of good order ; these lovers of religion. These men, these peace-loving men, who profess to be the followers of the meek and lowly Jesus, mark how they besiege the Mayor, how they importune him to go to the Church ; how they beseech him to attend their meeting ; how they notify him that arms, yes, arms, are provided in case of disturbance. And here let us pause. Is this the age when virtue, religion and morals are to be forced upon us by the strong arm of power ? when, if we will not hear, the sword shall compel us to do so ? when, by muskets and bayonets, we are to be compelled to swallow, whether we will or not, any doctrine which this set of people may tell us is good for instruction, or profitable for salvation ? And these men, who assemble with arms, who run bullets by the tumbler full, who parade their armed men within the walls of a Church, are they to claim exemption from crime under the plea that they are followers of a heavenly master ? Save one solitary instance, where do we find the Apostles, the original Christians, with arms in their hands ? and in the only solitary instance in which they resorted to the strong arm of power, how quick, how decided the rebuke which their peaceful Master gave them !

But here these men, these peace-loving men, as they call themselves ; these advocates of law ; these friends of good order ; these professed disciples of him who came to bring peace and good will to all men, don't find such a peaceful course answer their purposes quite so well. So they resort to arms for protection ; and

they pollute the worship of their peaceful Master by a martial array around the altar dedicated to his service. Mark how peaceful their course runs ! In this instance, there were first, prayers ! then a sermon ! then a stone !—and then, “ To arms, boys.”

But let us go to the 7th, memorable as the closing scene in this comic tragedy. And, to proceed in regular order :—the arms, the next we hear from them, were brought from the church ; “ fixed,” as the witness says, and Tanner calls upon boys to run him a tumbler full of bullets ; and people are called to array themselves upon the one side or the other of this vexed question. Forty-two men are found willing to form themselves into a military company ; men are drafted from among you ; enrolled in the service ; officers are elected, and the post of honor, the title of Captain of a squad of these men, is conferred upon my corpulent friend, William Harned. There is marching and counter-marching ; drilling and exercising ; file movements, and movements in echelon, up in the garret of a warehouse, at dead of night. I can’t imagine how they managed to do all this in a place where I should hardly have expected my friend the Captain would have found room to have squeezed himself in half-file, much less, to have managed to drill and manœuvre a whole company of men. So that you see, gentlemen, when all other sources fail ; when they find the conventions won’t do, and armed men at churches won’t answer their ends ; the doctrines of abolition are to be forced down our throats, by means of the formation of a independent, peace-loving, military company, with my friend and brother counselor Mr. Chickering as clerk, and my honored friend, Mr. Harned, as Captain. And was not all this calculated to disturb the peace ? was not this calculated to excite terror ? to stir up the feelings ? to rouse the passions, and to provoke an attack ? Precisely what we should have expected, exactly what these peace-loving men should have anticipated, did result.

Gentlemen, a man who is conscious that he is act-

ing from right impulses, wants no advice ; he acts from his own honest convictions. But Mr. Gilman was always seeking advice ; always asking counsel and direction ; always proffering his services ; always stating his readiness to act ; always declaring his willingness to be employed, and asking orders ; always seeking, in every way, in every manner, and at all times, to gain the arm of civil authority. Here was a party for war in times of unalloyed peace, and, for aught we know, "a party for peace in times of war."

My aged friend has read to you law, under which he asks you to acquit this defendant. He has resorted to the books, and read authority to prove to you that a man's house is his castle ; and that force may lawfully be used by the owner to defend it against the entry of those who would trespass. But the law speaks of a man's house ; of his domicile ; of the place where he lives ; of the place which he has provided for his family, and not of one's store ; not of a warehouse which is erected for the storage or sale of articles of merchandise. Who had threatened to attack these men in their domicils ? Who had threatened to destroy their houses ? or even to break open and enter them to destroy any article of property kept therein ?

But the press came at last : the press which was intended to preach insurrection, and to disseminate the doctrines which must tend to disorganization and disunion. With what delight they caught the first glimpse of their new-born child ; with what joy they hugged it to their hearts ! It was consigned to the tender care, to the fatherly protection of Mr. Roff ; but by mutual agreement, from some cause or other, perhaps from fear that it would be taken from the arms of Mr. Roff, and like its predecessors, be consigned to the bosom of the father of rivers, its destination was altered, and it was received by Mr. Gilman. And a noble thing they thought this was : a fine arrangement they thought this would be, I doubt not.

Mr. Gilman was popular ; he was loved ; he was

respected and honored ; he was wealthy ; and doubtless, gentlemen, they supposed that if it was once under his charge, all would be well ; that the press would be safe, and the flag of abolition would wave in triumph over the prostrate City of Alton. These men sought the battle ; they volunteered for the warfare ; they acted before the necessity called for it ; they waited not for the call of the law, but madly and rashly rushed to the contest, and the blood of the unfortunate Bishop, and the infatuated Lovejoy, flowed in consequence. They had no direction from your civil officers ; they had no authority : and they must suffer the consequences. It probably is true, as a witness has told you, that they determined not to fire till they were fired upon. They did not want to strike the first blow. And, gentlemen, their conduct puts me in mind of the manner in which we used to act as long ago as when we went to school. We felt cross ; we wanted to fight ; but like these grown up boys, we did not care about striking first. So one would put a chip on his head, and then tell another to knock it off, if he dared : and another would draw a line on the ground, and planting himself behind that, would dare his adversary to cross it ; or bid him keep off, if he knew what was good for himself.

Admit that it is lawful for a man to assemble his friends for the forcible protection of his domicile ; is it therefore lawful for him to assemble them in a warehouse, and importune the officers of the law for authority, and under cover of advice given as a friend, provoke a fight ? Suppose this press had not been guarded ; suppose that, taking advantage of the absence of those who had assembled for its protection, the mob had destroyed it. Had these people no remedy ? Is there no law which would have given them redress ? They talk of being friends to good order ; lovers of law !! Have they not taken the law into their own hands, and violated the laws of man and of God in depriving man of life ? And for what ? For a press ! a

printing press ! A press brought here to teach rebellion and insurrection to the slave ; to excite servile war ; to preach murder in the name of religion ; to strike dismay to the hearts of the people, and spread desolation over the face of this land. Society esteems good order more than such a press : sets higher value upon the lives of its citizens than upon a thousand such presses. I might depict to you the African, his passions excited by the doctrines intended to have been propagated by that press. As well might you find yourself in the fangs of a wild beast. I might portray to you the scenes which would exist in our neighbor states from the influence of that press : the father aroused to see the last gasp of his dying child, as it lays in its cradle, weltering in its blood ; and the husband awakened from his last sleep by the shrieks of his wife as she is brained to the earth. I might paint to you a picture which would cause a demon to start back with affright, and still fall short of the awful reality which would be caused by the promulgation of the doctrines which this press was intended to disseminate. Bear with me while I turn your attention to a law of this State.

Be it enacted by the people of the State of Illinois, &c., " That the judges of the Supreme Court, throughout the State, the judges of the Circuit Courts throughout their circuits, and justices of the peace in their respective counties, shall, jointly and severally, be conservators of the peace, within their respective jurisdictions," &c. " And shall have power to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this State, concerning his or her body, *or threaten to injure his or her property, or the property of any person whatever* ; and also, all such persons as are not of good fame, and the said judge or justice of the peace, being satisfied by the oath of one or more witnesses of his or her bad character, or that he or she had used threats as aforesaid,

shall cause such person or persons, to give good security for the peace, or for their good behavior towards all the people of this State, and particularly towards the individual threatened." Here there is law to suit the case of these individuals. Why did they not resort to it? They were threatened; their property was threatened: why not take the redress pointed out and given them by the law? They knew the individuals who threatened; why not go to a Justice of the Peace, enter their complaints, and bind the boys over to keep the peace and be of good behavior? Why not do this, instead of assembling their friends who would make law for themselves, and prostrate that enacted by competent authority? No, gentlemen, these men did not want to take the course of the law; their whole course was a crusade upon law; a crusade against your Constitution, a war against right; a war against peace; a war against liberty and good order.

But, gentlemen, I regret that in the execution of my duty, I am obliged to prosecute this defendant. I respect him as a man and a citizen. I regret that he suffered himself to be drawn into this excitement. His honesty and ingenuousness have been taken advantage of, and he made the dupe of others more artful and designing than himself. I cannot believe that this defendant, of his own accord, would ever have placed himself in a situation, where, by any possibility, criminal intention could have been manifested, or criminal act committed. But, like poor Tray, who you know was a very honest dog, this man must suffer, because he was caught in the company of Tiger. These abolitionists have got the smell of this man's money, and they have hung round him; they have dogged his pathway through your streets, they have besieged him in his place of business, they have fastened their fangs upon him, and they will not leave him till they have drawn the last drop of blood from the quivering fibres of his flesh; I mean the last dollar from his purse.

You are urged to acquit this man; to say that his

acts are justified because the attack upon his property was of that nature that he could not repel it, and unless he had assembled his friends, armed them and resorted to the strong arm of force. Can one wrong be justified because another wrong was committed? There is no set-off in crime. The prayer sometimes made in other places, "excuse me because Bill has done worse," is not good authority here. You are sworn men; sworn not to say who was most riotous, which party had the most law; but sworn to try the guilt or innocence of this defendant, by the law and the evidence. This meeting was dangerous, doubly dangerous, because it had the outside appearance of law about it.

The fact that these people assembled together, that they, when so assembled, protected or endeavored to protect their property, is not in itself criminal; but it is the manner in which such assemblage and such defence was made, that we charge as unlawful. It is the manner in which such defence was made, that has brought this man to your bar, to answer to his country for the offence he committed.

The purpose of petitioning is lawful, and men may assemble and do assemble for the exercise of their rights in the fulfilment of that purpose almost daily. The purpose of mustering the militia is lawful, though these meetings are getting to be quite rare, but yet, if a large number of men should assemble with arms in their hands, even if for the purpose of consulting about matters of common grievance, or with the design of petitioning to your legislature, I hardly think my venerable friend upon this defence would pronounce such assemblage lawful. It would be calculated to excite terror and distrust; it would be calculated to disturb the good order of the community, and lead to a breach of the peace, and therefore it would be unlawful. It is the wisdom of law to prevent crime, rather than to punish criminals. The knowledge of its provisions is within the reach of all men, and if men may know their rights and liabilities, and will not, or, if knowing the law, they

wilfully violate its principles, let them feel the power have despised it, let them suffer from the vengeance they have braved.

If Mr. Gilman is indicted for acts done in defence of his natural rights, if he is to suffer for his prosecution of a good cause, let such considerations be addressed to the court, in mitigation of punishment; they should not be urged to you, in justification.

Who questions the lawfulness of the act done, by these defendants? Who doubts the unlawfulness of the manner in which those acts were done?

Some forty individuals assembled in the first instance, some fifteen or twenty remained, with firearms in their hands, well provided with ammunition, with tumult, with disorder, or, as the gentleman told you, with the stillness of the calm which precedes the storm; but the stillness made not the thunder and lightning of that storm less fierce, or less fearful when it burst.

It was unnecessary that Gilman should have fired a gun; the laws, as I have shown you, are broad enough to have ensured his safety, amply sufficient to have afforded protection to his property. If he chose to strike a blow for his own rights, let him suffer the consequences.

And the address to the mob, "we will not give up the press," but have resolved to lose our lives, if necessary, in its defence, affords conclusive proof, bears ample testimony to the intent, by which this defendant was actuated. And that other remark, proceeding from him who was the first victim to its truth, "we must not lose a fire;" how prophetic the exclamation!!

Go then, gentlemen, if you can, and say upon your oaths this defendant is not guilty; regard the purity, the honor, and integrity of his character; value the kind feelings, the expanded benevolence, the generous spirit, the warm heart of this man as highly as you choose; but in paying a just tribute to these feelings and qualities of the man, forget not the calls of your country, the demands of the law.

I will not threaten you, I will not warn you of your

danger in returning a verdict of "not guilty," by way of intimidation. I will not say, you will not be safe in returning such a verdict. I believe there is no danger; I will guarantee your safety; I will underwrite for the City of Alton.

No, gentlemen, you need no such protection, you are safe in returning any verdict; safe in your own high characters as men; safe in your sacred characters as jurors. Neither are you to be affected by calumny; such weapon would fall harmless at your feet.

But remember, that when men like Mr. Gilman are convicted; when they are held amenable to the laws for their acts, and the natural consequences of those acts; a salutary chastisement is inflicted upon the individual, and a useful lesson taught to others, who are humbler in life than the accused.

Go then to your retirement, act independently, without fear or prejudice, honestly, without favor or affection. I put the cause into your hands; weigh well the evidence, examine carefully the law, and pronounce fearlessly your verdict.

The jury retired, and after an absence of about fifteen minutes, came into court and declared a verdict of "Not Guilty."

January 17th, 1838.

At the opening of the Court this morning, U. F. Linder stated to the Court, that upon consultation with the Prosecuting Attorney for the City, they both had come to the conclusion, that the trial of the individuals included with Mr. Gilman in the indictment, would result in the return of a similar verdict as the one given in the case of Mr. Gilman, and he therefore would enter with permission from the Court a nolle prosequi against Enoch Long, Amos B. Roff, George H. Walworth, George H. Whitney, William Harned, John S. Noble, James Morse, jr., Henry Tanner, Royal Weller, Reuben Gerry, and Thaddeus B. Hurlbut; and upon proclamation the aforementioned individuals were discharged without day.

ALTON TRIALS.

IN the Municipal Court, of the City of Alton, at its January Term, in the year A. D. 1838, and on the nineteenth day of said month, came on for trial the following case, before Hon. William Martin, Judge.

The People of the State of Illinois,

vs.

John Solomon, Solomon Morgan, Levi Palmer, Horace Beal, Josiah Nutter, James Jennings, Jacob Smith, David Butler, William Carr, James M. Rock, and Frederick Brucky, indicted for a Riot, committed on the night of the 7th November last, within the limits of the City of Alton, in entering the storehouse of Benjamin Godfrey, and Winthrop S. Gilman, and breaking up and destroying one printing press, then and there found, the property of the said Benjamin Godfrey, and Winthrop S. Gilman.

For the People,
Francis B. Murdock, City Att'y.
Alfred Cowles, Esq.,

For Def'ts. on trial,
U. F. Linder, Esq.,
S. T. Sawyer, Esq.,
Junius Hall, Esq.

Morgan Jennings, and Brucky, not having been arrested, the trial proceeded against the remainder.

And at the calling of the case, the defendants presented the following Demurrer :

John Solomon,
Levi Palmer,
Horace Beal,
Josiah Nutter,
Jacob Smith,
David Butler,
William Carr, and
James M. Rock,
Impleaded with James
Jennings, Solomon
Morgan, and Frederick
Brucky,

alt.
The People of the State of Illinois.

In the Municipal Court of the City of Alton, January Term, 1838. In an indictment for Riot.

And the said Solomon, et. al. who are impleaded with the said James Jennings, et. al. in their own proper persons, come into Court here, and having heard the said indictment read, say that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that they the said Solomon, &c., are not bound by the laws of the land to answer the same; and this they are ready to verify. Wherefore, for want of a sufficient indictment in this behalf, they pray judgment, and that by the court here they may be dismissed, and discharged from the said premises, in the said indictment specified.

Linder and Sawyer for Defendants Solomon and others.

And Linder in support of the motion.

This demurrer has been drawn up, and I now present it for the purpose of saving the time of the court; and also saving the jury from any trouble in the case, if the indictment is defective. It is not presented from any fear I have as to the result of this trial; nor from any apprehension I feel as to the fate of the defendants. I know how useless it would be to consume time in the investigation of the facts of this case; if, after a verdict, a motion in arrest of judgment could be sustained, upon the ground, that the charge as set out in this instrument, is not properly made. And I have a disposition too, to allay any heart-burnings which may be felt in this community. I have made up my mind that this indictment is defective, that the offences with which the prosecuting attorney has charged us, are not properly alleged, and I ask the attention of the court, to sections 113, 115, 116, 117, of the criminal code.

SEC. 113. "If two or more persons assemble together for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse," &c.

SEC. 115. "If two or more persons shall assemble together to do an unlawful act," &c.

SEC. 116. "If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances towards it," &c.

SEC. 117. "If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act, in a violent and tumultuous manner, the persons so offending shall be deemed guilty of a Riot," &c.

Now it will be seen that all these sections contemplate an assemblage; a meeting together of two or more persons for an unlawful purpose. But it will be seen, that this indictment is framed under the 117th section; and I ask of the court, a close examination of that section, and I expect that the court will give a rigid

constructive to it. Criminal laws are always construed more rigidly than any others, and I ask your honor to construe this law strictly. I will not trouble the court with the first principles of law. I will not repeat the general rules. Every one knows, that if an indictment is framed so as to cover an offence specially described by statute, that the letter of the statute must be followed. That if the offence charged in the indictment differs from that specifically pointed out, and defined by the statute, that it is a fatal variance, and may be taken advantage of by demurrer. Every one knows that more strictness is required in drawing an indictment under a statute than by common law.

Now for the Indictment. The Grand Jurors, &c., present, that James M. Rock, &c. on, &c. at, &c. "with force and arms unlawfully, and with force and violence, did enter into the storehouse of Benjamin Godfrey and Winthrop S. Gilman, there situate; and one printing press, the property, goods and chattels of the said Benjamin Godfrey and Winthrop S. Gilman, then and there being found, did unlawfully, riotously, and routously, and with force and violence break and destroy." Now sir, in the 117th section of the criminal code under which this indictment is framed, there are two distinct offences; and the wording of the statute requires that each of these offences should be charged in a particular manner. Now in an indictment under the 116th section, if there was an omission, in stating that the act alleged to have been committed was done with a common cause of quarrel, such omission would be fatal.

If this indictment is framed under the second clause of the 117th section, it should set forth the offence in the words of the statute, and these individuals should have been charged with doing a lawful act in a violent and tumultuous manner. But it is not so, and therefore it is under the first part of that section, that this indictment was framed. And let us see if these two apparently independent and distinct offences, specified in the 117th section, are not so closely, so directly and intimately con-

nected in their character and nature, that an allegation of a violent and tumultuous manner, is not necessary in charging both offences.

If two or more do an unlawful act, with force and violence, or even do a lawful act in a violent and tumultuous manner, *which manner attaches to both offences*, they shall be guilty of riot. The two clauses of the section being connected by the nature of the language employed to define the offences, the violent and tumultuous manner is necessary to the completion of both offences. There is no period, no punctuation of any kind, nothing which separates the two clauses of the section, unless it be the words with or without a common cause of quarrel, and do these words, slipt in as they are in the middle of a sentence, sever the offences? Do they make the clauses and offences so distinct, as that what is necessary to one, is unnecessary to the other? If we can judge by force of language what necessarily attaches to an offence; if we can judge by the nature of the language, employed to define what constitutes crime, a violent and tumultuous manner must be alleged in an indictment under either of the clauses of this section. A tumultuous manner should be attached to both;—it is required by the language of the statute, and if it is dispensed with in practice, the omission can be taken advantage of, and the indictment be quashed, or the judgment be arrested.

Per Curiam. No objection need be made to the demurrer: the argument would be applicable, and entitled to consideration if the words in a violent and tumultuous manner were not omitted in the first clause of the 117th section. Two distinct offences are there defined; one, the doing an unlawful act; the other a lawful one. A lawful act may be done with force and violence, and still the individual be guilty of violating no law. An unlawful act is criminal in its very nature, and the manner in which it is done, determines the nature of the crime, whether it shall be of a higher, or lower denomination.

The Demurrer is overruled.

Linder. I don't myself see any great force in the demurrer: it was drawn up by my brother Sawyer, and at first did not I know but I might make something of it.

A plea of "Not Guilty" was entered.

Linder. I know the opinion of the Court upon the point, but I conceive that each of the defendants is entitled to a peremptory challenge of his full number.

Per Curiam. I think not.

Linder. I cite——

Per Curiam. The Court is willing that each of the individuals indicted for this offence may have a separate trial, if he requires it; inasmuch as the rule was adopted in the indictment against Gilman and others. But for the purpose of saving time, the Court is willing to order a nolle prosequi to be entered in favor of any of the defendants, against whom the People shall fail to produce any evidence of guilt, that such acquitted persons may subsequently testify for the other defendants.

The following individuals were then called as Jurors and sworn on the "voir dire."

George Carlton. Challenged by People.

Timothy Terrell. Sworn.

John P. Ash. Sworn.

James Mansfield. Rejected as incompetent, having formed or expressed an opinion as to the guilt or innocence of the defendants.

William Lewis. Rejected as Incompetent for reason as above.

Aaron Corey. Rejected as incompetent, for reasons as above.

Jas. Wellington. Challenged by people.

Peter Whittaker. Rejected as incompetent, for reasons as above.

Mahlon Weber. Rejected as incompetent, for reasons as above.

William S. Gaskins. Sworn.

Richard P. Todd. Objected to by Government as not being on the regular panel.

Per Curiam. The Court has no objection that the regular pannel should be first called. Mr. Todd, however, was returned as a juror in place of one of the regular panel, who was excused.

Murdock. Stand aside, Mr. Todd.

George Allcorn. Linder for defence. We take the juror.

Cowles for people. We take him.

Juror to the Court. I have formed and expressed an opinion as to the guilt or innocence of the defendants.

Per Curiam. The juror is incompetent.

Linder. What? if both parties agree to take him?

George Allcorn. Sworn.

Stephen Griggs. Challenged by defendants.

Jas. Stuart. Had been excused.

Luther Johnson. Rejected as incompetent, for reasons as above.

Horace W. Buffum. I was excused on Wednesday morning from any further attendance, on account of sickness. I am better now than I was.

Murdock for people. We want the regular panel.

Juror. I have both formed and expressed an opinion as to the guilt or innocence of all the individuals.

Horace W. Buffum, rejected as incompetent, for reasons as above.

Effingham Cocke—had formed an opinion as to the guilt or innocence of some who were indicted.

Per Curiam. The juror is incompetent.

Chauncey Underwood—had been previously excused.

John Clark. Sworn.

Robert M'Farland. Challenged by the people.

William T. Hankinson. Sworn.

Richard P. Todd. Sworn.

William P. Little. Rejected as incompetent.

James E. Starr.

Q. By Linder. How old are you? over twenty-one? *Ans.* I am.

Q. By same. Do you pay taxes? *Ans.*—I do. Challenged by defendants.

R. K. Wheeler. Rejected as incompetent.

Alexander Botkin—had formed no opinion as to the guilt or innocence of the defendants in entering the store.

Cowles, for people. The charge of riot; have you formed or expressed an opinion as to the guilt or innocence of any of the individuals, upon that charge?

Linder. No riot is charged in the indictment.

Juror. I saw some of the individuals indicted, in the street that evening, but I did not see them beyond State-street: and I have formed no opinion as to their guilt or innocence under the indictment.

Cowles. It matters not whether the juror had formed an opinion as to the existence or truth of certain facts. If he has formed an opinion that certain facts, if proved, will not constitute a riot, then he is incompetent.

Linder. My position is this; that the People can only convict these defendants upon the charge alleged against them in this indictment.

Cowles. The jurors are judges of both law and fact; if they have formed an opinion upon the law, provided the facts are proved, then they are not, and cannot be impartial jurors. The question which should be propounded to this individual is, whether, supposing certain facts are proved, he has formed an opinion.

Per Curiam. Two essential things are necessary to sustain an indictment. First, that certain facts should be proved to have existed; and secondly, that those facts should be such as to constitute an offence. The juror should not be asked whether he has formed an opinion as to the existence of certain facts, but whether he has formed an opinion as to facts constituting guilt. The indictment is under the 117th section.

Certain facts are set forth, but the charge is riot. If any juror has formed an opinion as to the innocence or guilt of the charge, then he is incompetent.

Linder. My question was whether the juror had formed an opinion of the guilt or innocence of the individuals as to the charge in the indictment.

Per Curiam. The individuals on trial are charged with having committed a riot. Have you, Mr. Juror, formed an opinion of their guilt or innocence upon that charge?

Juror. I have not. I know nothing of the facts.

Q. By Juror. Does not the fact of having been elected justice of the peace excuse me from serving?

Linder. No!

Cowles. Has not a justice of the peace a right, by common law, to act as coroner, so is he not incompetent?

Per Curiam. That is a personal privilege which the individual may or may not claim.

Q. By Linder. Have you been commissioned as a Justice of the Peace? Ans. No.

Sworn as Juror.

E. Breath.

Q. By Linder. Are you a tax-payer? Ans. I am not; I have got nothing to be taxed.

Per Curiam. No matter whether he pays taxes or not. The law includes all free taxable persons.

Q. By Cowles. Do you pay highway taxes? Ans. I do.

Q. By Linder. Rejected as incompetent by reason of having formed an opinion.

Treadway—never had expressed an opinion, although he had formed one. Rejected as incompetent.

Rice. John Solomon has related to me some facts. I have formed an opinion as to him, but not as to the others. Rejected as incompetent.

Evans. Rejected as incompetent.

Wheeler. I don't know who the defendants are. Have formed no opinion. Sworn.

Walter Lachelle.

Q. By Linder. Have you been naturalized? *Ans.*
I have. Sworn.

Job Lawrence. Challenged by defendants.

Daniel Carter. Sworn.

Samuel W. Hamilton—had formed an opinion, but the counsel agreed to take him, and he was sworn.

A jury having been obtained, Murdock for the People in the opening of the case, said: So much of the time of the court has been occupied in the trial growing out of the same tragedy, for a participation in which these individuals have been indicted, and so much of your own time has been consumed in the preliminary steps of this trial, that I am warned to be as brief as possible. It is unnecessary to tell you that these individuals are indicted for a Riot; that the Grand Jurors have found that these individuals, with divers others, assembled on the night of the 7th of November last, with a determination to attack the storehouse of Godfrey & Gilman, and of breaking up and destroying a printing press stored therein.

The indictment is in these words.

“Of the January Term of the Municipal Court of the City of Alton, in the year of our Lord one thousand eight hundred and thirty-eight.”

State of Illinois, }
City of Alton, ss. }

The Grand Jurors, chosen, selected and sworn, in and for the body of the City of Alton, in the county of Madison, in the name, and by the authority of the people of the State of Illinois, upon their oaths, present that John Solomon, Solomon Morgan, Levi Palmer, Horace Beal, Josiah Nutter, James Jennings, Jacob Smith, David Butler, William Carr, and James M. Rock, and Frederick Bruchy, all late of the City of Alton, in the County of Madison, and State of Illinois, on the 7th day of November, in the year of our Lord one thousand eight hundred and thirty-seven, with force and arms, at the City of Alton aforesaid, and within the

corporate limits of said City, unlawfully and with force and violence, did enter the storehouse of Benjamin Godfrey and Winthrop S. Gilman, there situate, and one printing press, the property, goods, and chattels of the said Benjamin Godfrey and Winthrop S. Gilman, then and there being found, did, unlawfully, riotously, and with force and violence, break and destroy, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the State of Illinois.

Francis B. Murdock, Prosecuting Attorney,

for the Municipal Court of the City of Alton

Endorsed 'a true bill.'

Thomas G. Hawley, Foreman."

For the purpose of sustaining the indictment, gentlemen, of the jury, it is necessary that the government should show, that two or more persons assembled, for an unlawful purpose; that they entered the storehouse of Godfrey & Gilman, with force and violence, and that they broke up and destroyed the printing press, then and there found, as is charged in the indictment. It is necessary that the people should show that Godfrey & Gilman were in the possession of the property destroyed. They need not have been the actual owners of the property; it is sufficient if they were in the possession of the property, at the time it was broken up and destroyed. If they had a special property, as for instance, if they were *bailers* of the property, it is enough.

The indictment is framed under the 117th section of the criminal code, and charges the defendants with having committed a riot.

Linder for Defendants. This case, gentlemen, is the last trial, the closing scene in the comic tragedy which has been played off in your city. You are to determine the guilt or innocence of the individuals now on trial, by the law and the evidence which shall be given you, and you will have to believe three things before you can find these defendants guilty: first, that

two or more entered the storehouse with *force and violence*, because that is the charge contained in the indictment : and here let me say to you, that you are the judges both of the law and the fact ; the government are bound to satisfy you of the truth of every allegation they have charged against my clients : they are bound to satisfy you that certain facts existed ; that these persons entered the storehouse of Godfrey & Gilman with force and violence ; that they unlawfully, riotously, and with force and violence, broke and destroyed the press ; and that that press was the property of the individuals whom they have alleged were the owners of it.

Here is the section under which the indictment is framed : “ If two or more persons actually do an unlawful act, with force or violence, against the person or *property of another,*” &c.

Now the prosecutors are bound to prove all their allegations ; they are bound to prove that the building was the property of Gilman & Godfrey ; that the press was the property, the bona fide property, of Gilman & Godfrey ; that two or more persons, unlawfully and with *force and violence, entered the building* ; that when they had so entered, they broke up and destroyed the press, with force and violence ; and, further, that they had no right to do so : and if they fail in proving, in satisfying you of the truth of any one of these allegations, you will be bound to return a verdict of “ not guilty.”

Murdock. I now propose to enter a “ noll. pros. against those individuals included in the present indictment, who have not come in.”

Broughton called and sworn. I know nothing of what took place on the night of the 7th of Nov. last. I was not present at the time of the riot ; have had conversation with some of the defendants ; no particular recollection of what passed ; it was a general conversation, in regard to the riot ; every body was talking about it ; have heard it spoken of by a great many indi-

viduals. I was on the ground after the battle was fought ; did not see the press broke up ; did not see it that night, as I recollect ; saw a part of it next morning ; no persons ever told me that they broke it up, and I never made but little inquiry about it. No proposition was ever made to me, that I should be the captain of the mob. There was a great crowd, when I got to the warehouse, that night. I don't know that I saw any of the defendants in it. I went into the warehouse, to look at the corpse ; some one asked me to do so, and I did.

Henry H. West. On the afternoon of the 7th, I was standing at the store door, and I saw John Solomon coming along the street. This was perhaps an hour or an hour and a half before the mob. Solomon stopped, and told me that a mob was gathering ; that preparations were making to burn or blow up the warehouse, unless the press was given up ; said Gilman had been a friend to him, and he did not want to see him or his property injured ; and he requested me to go and tell Mr. Gilman what was going to be done. Soon afterwards I saw him again. I went up to my counting room, found Mr. Keating, and in company with him went up to see Gilman. I told him what Solomon had told me. I soon returned from the warehouse, came down street to the counting room, and staid a little while. I soon started up, and as I came into the street, I saw squads of men gathering about the street, principally in and before the coffee houses. I don't know that I recognised any of the defendants at that time in the street. I started to go up to the warehouse again, and on the way, met Dr. Horace Beal. I asked him if he would not go up with me. He said no. I then asked him if he would not use his influence to induce the mob to desist and disperse. He replied, he could have no influence with them, and would do nothing about it. I went up and into the warehouse ; had been there but a little while before the mob came ; they came on the side of the store next the river. I knew

only one of them. I started to find the Mayor, Mr. Krum. I met him on the street, talking to a crowd of people. Among the crowd I saw Rock and Bruchy. I saw Morgan some where round at that time, but do not recollect exactly where. I saw Nutter early in the evening; heard him say he was sorry to do any thing criminal. While I stood there, an arrangement was made, by which Mr. Krum was to go into the warehouse, and let them in the house know what the mob wanted. I went into the warehouse again with Krum and Mr. Robbins. We came out soon, and Mr. Krum addressed the crowd that was collected. At that time I saw Rock and Beal in the crowd. I soon saw the fire applied to the building, and ran down to put it out. I started to go up the ladder; but desisted, as I found guns were aimed at me, and saw them flash. At the time I ran down, I saw Rock; he was standing near the ladder. I saw another man standing about there at the same time, whom I noticed. I did not know him at that time. I see him now; it was Palmer; he had no gun then. I saw Frederick Bruchy there at that time; he was swearing a good deal. Soon after this I went up and stood at the corner of the Penitentiary wall. I saw Beal there; he had a gun. It was soon said that the people inside would give up. I went again into the crowd, and run round the warehouse to help them get away if I could. I went up the river a little way, thinking that would be the best direction for them to run when they left the building. Some one called out to me, and told me to "*stand*" or they would shoot. I turned round—saw Gilman and the others at the door, and requested them to wait a few minutes. I turned and assured the crowd that Lovejoy was dead, and told Mr. Gilman and others to run then. They did so. I then run round the building and up the ladder to put out the fire on the roof of the building, and called to them below to help put out the fire. Dr. Beal run down to the river, and soon came back and said he could find nothing to bring any water in. I took off my

hat and threw it down to them. Dr. Hope picked it up, filled it with water, brought it to me, and I put out the fire. I came down the ladder and went into the warehouse. I saw Lovejoy laying there. I went up into the garret; as I came down I saw Gerry, (one of those who had been in the warehouse,) and secreted him. I watched for an opportunity, (as he was rather disinclined to remain there,) took him down stairs with me, saw the way was clear, and told him to run. He did so. I saw Beal again then, and Jacob Smith. This was the only time I saw Smith that evening. At this time I recognised Butler's voice. I saw Palmer too, I think. About the time the fire was set to the buildings he was near the ladder. I don't think I saw Solomon.

I went into the warehouse with the crowd. I went in before the press was thrown out—at that time I went into the counting-room. When I went out, I saw some one breaking up the press, I don't know who; I did not notice, as I was anxious about Gerry. I made some remark to divert the attention of the mob from him, and told him to run. I don't know what Palmer did. I don't think I saw Palmer on the ground. I saw him early in the evening in the coffee-house—he was talking loud, but I don't know what he said. When I saw Beal he had a gun, and was standing next the penitentiary wall.

I was the first who went into the warehouse after Gilman and the others left it. I saw Rock at the foot of the stairs. I saw Dr. Beal up stairs. We went towards where Lovejoy laid, nearly together. I saw a good many of our citizens in the warehouse soon afterwards. I saw Rock and Beal there early, before the press was thrown out of the house. Dr. Beal went with me into the counting-room—think Beal had no arms by him at that time. When I saw Rock at the time the fire was set to the warehouse, he was standing some distance this side of the ladder—he had a gun. Dr. James Jennings had a gun. I believe he has taken French leave. I saw Solomon Morgan some time during

the evening, on the street—he *seemed crazy*—was rallying the boys as he called them—he had no gun, I think. I did not see the commencement of the attack upon the warehouse. I was in the building at that time. I understood the attack was made entirely upon the side of the house next the penitentiary wall.

The guns were first fired by those outside ; the windows were all broken while I was in the building ; at the time I was conversing with Mr. Gilman, I was a good deal exposed by the attack made from without.

The mob poured into the warehouse soon after Mr. Gilman and the rest left it—soon after the fire was put out. I went into the warehouse on the front side ; and don't know how the mob got in. I went in because I was anxious that no property should be injured or destroyed ; there were a good many candles burning about in the store, and I thought there was danger of injury to the property. When I saw Dr. Beal at the penitentiary wall, it was about the time the fire was first set to the building. I do not know whether any guns were fired from that quarter at that time or not. I heard guns fired at that time ; and saw the flash, but don't know whether it was in the place where Dr. Beal was standing or not. I recognised Morgan encouraging the "boys ;" he said, "go and finish your work," and a good many other expressions. When I saw Rock he had a gun ; and Beal had a gun when he stood up by the penitentiary wall ; he stood behind or close by some salt barrels which laid there ; I saw both Beal and Rock inside the warehouse before the press was thrown out—as soon as it was found, I left and went down stairs—they were moving it when I turned away—I don't know who the persons were who moved it. I thought I heard Butler's voice under the bluff as I was told to "stand" when I was going up the river—I was on the ground when the ladder was brought—I don't know who brought it there—I saw it laying on the ground ; when it was put up to the building I was standing some distance off ; it was up when I saw Rock standing there with

his gun ; the fire had been put on the roof at that time. When I was running round the warehouse, Rock told me I had better keep away. I did not hear Beal call the boys to rally after the press was destroyed. I did not hear any thing said about preventing any arrest ; when John Solomon told me that preparations were making to burn or blow up the warehouse, if the press could not be got without, I do not recollect whether he used the word "We" or "They." Godfrey & Gilman were in the occupancy and possession of the building ; the press was in the warehouse ; Solomon appeared to be anxious about the safety of Mr. Gilman ; said he had been a friend to him. I do not recollect what day of the month the riot was, it was in November last, the first part of the month, in the corporate limits of the City of Alton.

.. Cross-examined. The warehouse is built of stone, was occupied by Godfrey & Gilman for selling goods ; their house is a commission and storage and forwarding house.

Q. By Linder. Do you know whether they keep printing presses for sale by wholesale or retail ? Ans. I do not.

Q. By same. Do you know who that press belonged to ? Ans. I do not : I understood that it either belonged to Lovejoy or was under his control.

Q. By same. Did you hear any thing said while you were in the warehouse that night about the ownership of the press ? Ans. I did not.

John M. Krum. The riot was on the night of the 7th of November last ; at the time I first had information, I went to the spot with Mr. Robbins. I first met, if I recollect rightly, those who were carrying Bishop. Bruchy, Solomon, Morgan, Butler, Carr, Palmer, were among them. I went up to them as they were carrying Bishop to Dr. Hart's office. I inquired of them if any one was hurt ; was told some one of "our" or "their" company was shot. I asked if he was hurt badly ; was told they thought not. I endeavored to

persuade them to disperse. Carr, Palmer, and Morgan, conversed with me; soon Bruchy came up again, and some others I did not know. All seemed a good deal excited. I asked them what they wanted; Carr, I think it was, answered me that all they wanted was the press; that they did not want to injure any one or any one's property, but that they wanted the press, and would have it. I used all the means in my power to induce them to disperse. I told them of the penalties and liabilities they were incurring; quite a crowd had gathered round me by this time.

Some one, I don't know who, first proposed, and afterwards Carr repeated the proposition, that I should go into the warehouse and let the people who were inside know what they wanted. I think Palmer urged the proposition. This is all which I recollect of it at that time. When I first went up, the crowd were doing nothing, they seemed a good deal excited, and were talking loud and angrily. I saw Dr. Beal that evening; I saw him for the first time standing before me when I addressed the crowd after I came out of the warehouse. I think he spoke to me. At this time the mob were some distance from the warehouse. Beal said something about the conduct of those who had shot Bishop. This was after I had come out of the building. I next saw Dr. Beal, in State-street, as I was standing by the corner of Mr. Marsh's building; he, Dr. Beal, came down State-street, passed by where I stood, and went down towards the river; he had a gun by his side at that time; the first time I saw him he had no gun; at the time I saw him with a gun he was going towards the river; he came down State-street; he was alone. A person might go down State-street and so up Front-street to Godfrey & Gilman's warehouse; I say he might do so, he could if the river was not too high. I do not know how high the river was that night; neither do I know that he went to Front-street. I noticed him a moment or so as he was passing along in State-street. I was not at the warehouse

immediately at the destruction of the press ; it was broken up when I got there. I saw Solomon Morgan at that time ; I mean when I got to the warehouse after it was given up. I saw Mr. Nutter there, but I do not know his christian name ; he keeps a livery stable in Upper Alton ; I see him now, he is the same person. I think I saw Bruchy ; there was such a crowd and the candle light struck me in such a direction, that it partially blinded me ; I could not see faces distinctly. When I saw the men I have mentioned, I stood by the side of Mr. Greeley. I noticed Solomon Morgan ; he was making a good deal of noise. Bruchy and Beal, were there, standing near ; they were doing nothing. I don't think I saw Rock at the south end of the building (side where the press was broken) at all. I did see him that night ; the first time was when Bishop was carried to Dr. Hart's office. I did not speak to him, nor did I hear him speak at that time as I recollect. As I went towards the warehouse, when I was going in I saw him ; he was standing a little distance off, and as I came out I also saw him again ; I saw him again after I had addressed the crowd ; the next time I saw him was in State-street ; my attention was called to him by a reply he made to young Pinchard. I spoke to him, stopped him, and he walked off ; he had a gun in his hand at the time.

When I saw Dr. Beal at the time they were breaking up the press, he made a remark like this, " Now boys we must stick together ; and if any one is arrested we must come to the rescue." This was when the press was broken up and nearly all thrown into the river. I don't recollect that I saw Carr at that time. I was standing at the corner of State-street, near Marsh's store, at the time the warehouse was entered. After I went into the building I saw Drs. Beal and Jennings in the building. These are the only ones of the defendants I recollect to have seen in the building. I was there but a few moments. At the time I commanded the crowd to disperse, Solomon and Palmer

stood near me. I don't recollect that I saw Smith at all. Butler I saw in Second-street when I first went along. I did not see him again that night. He had a gun at that time. When Dr. Beal said, "Now boys, we must stick together," &c., Bruchy stood in front of him; and I think Butler also, although I am not positive about Butler. At the time Dr. Beal made the remark, there were but two or three persons very near him. I think Butler was one of them, though, as I said before, I am not positive. One of those who stood near him was a stranger to me. Beal had a gun in his hand at the time. I could not see unless I stood upon something. One of them had arms. I think it was Butler. While standing there I was several times crowded off the box I was standing on. I heard no guns fired while I stood there. Hammers were flying pretty busily, and it was somewhat dangerous standing there.

Cross-examined. I am not positive whether Dr Beal said "Now boys *we*" must stick, or "*you*" must stick together, &c. I think he used the word "*we*." I saw Bruchy and Morgan use the hammer in breaking up the press. I saw Nutter throw pieces into the river. I think I saw some of the present defendants breaking up the press. The press had been thrown out before I got to the building. Lovejoy had been killed when Beal made the remark I have repeated. I don't know what Dr. Beal alluded to. I think I have given his remark *verbatim*. All the persons whom I have said I saw were out of the house. They stood a little east of the store door. The press was broken up about where this and another warehouse join together. I heard the crowd say, all they wanted was the press. I heard Beal, when I closed my remarks to the crowd, address some words to me, but what they were I can't swear. It was about the time I received a shot. There were a great many people standing round during the greater part of the riot; and I heard others besides those who were armed say, that they wanted the press. At

one time I should think there were 200 people in State and Second streets.

I don't know who the press belonged to. I don't know whether Mr. Lovejoy claimed it or not. I heard Lovejoy speak of the press, but I don't know whether he said any thing about the ownership of it. I don't know who went into the house and threw the press out.

Q. By Linder. The press was broken on the wharf, was it not? *Ans.* It was.

Q. By same. Was it broken near the river? *Ans.* Not very near.

Q. By same. If the pieces had not been thrown into the river, would they not have been in the way of drays? *Ans.* They might.

Examined again by people's Counsel. I never saw the press. I saw some boxes in which I was told the press was.

Sherman W. Robbins was now called, but stood aside at the request of defendant's Counsel, who said that Mr. W. S. Gilman had been summoned as a witness, and was in court; and that he was anxious to be released from attendance as soon as was possible.

They, therefore, proposed that he should be examined at the present time, and after his examination was concluded, the remaining witnesses for the people could be called.

Consent having been given by the Counsel for the People to this arrangement,

Winthrop S. Gilman, was called by the defendants' Counsel, and sworn, and testified as follows:—The press which was destroyed on the night of the 7th of November last, was received by us on storage, at the request of Mr. Roff. It was not owned by us.

Cross-examined by Counsel for Government.—The press was in the possession of Benjamin Godfrey and Winthrop S. Gilman; I did not know how the last press came to be sent, nor who sent it. Godfrey & Gilman own the store; it has been built since 1833 or 1834. We have title deeds to the property. Linder

objects to evidence of this kind as to the ownership of the building. "Title deeds are the best evidence of property, let them be produced." Objection sustained.

I was one of those who were in the building on the night of the riot. We were forced to leave the building by the mob : the first attack was made by stones, which were thrown against the building ; a gun and a pistol, as I thought, were then fired by those on the outside ; there was firing then from both parties ; after this there was a short intermission ; firing soon was again resorted to, and in a little while the fire was put to the roof of the store. Mr. West gave us this information. We soon left. We left the store to prevent its being burnt up. We received the communication from West that the fire was actually kindled ; the press was in a box ; there was a cast-iron roller, however, which composed a part of it, that was not in a box ; the boxes which were taken out of the store, and which contained the press that was destroyed, were the same that were received on the 6th of November, when Mr. Krum was present.

I don't know that I recognised any one of the mob, unless it was Carr. When the mob first came up to the building, and after I had addressed them, I think it was Carr who answered me. I judged it to be him from the voice and appearance. He said they would have the press at the risk of their lives. I saw no one else whom I recognised. We left the building, persuaded that our lives would have been sacrificed if we had remained. The building was occupied by Godfrey, Gilman & Co., Mr. Benjamin Godfrey and myself. After we left the store several guns were fired at us ; no one was wounded that I know of. None of the shot took effect upon my clothes. I understood that they did upon some of the others : these guns were fired by the mob outside.

Q. By Cowles for Government. If you receive goods for storage, are you or are you not liable ?

Linder. You need not answer the question, witness:

I regret, your honor, that I feel called upon by a sense of duty, to interpose objections so often, to the different questions which are propounded by the Counsel for the People. It is matter of regret to me, and I fear that I may fall under the displeasure of the Court by so doing. But I cannot sit still and permit questions to be asked of the witness, so plainly, so positively, and so absolutely improper as this. When the witness is asked whether he is not liable for the loss of goods in his hands on storage, what is it but asking the witness to be a judge? The question of liability is a pure question of law; one which the witness is presumed not to know; which he is to be presumed to be incompetent to decide, and one which, whether he knows or not, he will not, I trust, be permitted to answer. If witnesses are to be allowed to testify as to points of law, why do you sit on that bench?—or why has our statute declared that the Jury shall be the judges of both law and fact? If there has been any contract of responsibility entered into, by which this witness is liable for this property, let the witness be inquired of concerning such contract; let him give us the facts of the case, and we will take care of the law.

But suppose he is responsible: does that fact make him the owner of the press? does that fact vest the property in him? It puts a special property in him I admit, but I wish to lay down the doctrine here, as I shall lay it down, by and by, to the jury; that it is not sufficient to sustain the allegation in this indictment, that Godfrey & Gilman should have had a bare special property in this press. When a man is indicted for stealing property, it is not competent, it is not sufficient to prove a special property barely, in the individual whose property is alleged to have been stolen.

The property must be proved to belong to him, in whom it is alleged to have been, at the time it was stolen. It is useless to travel back to the "Form Books," to prove the truth of this doctrine. Our statute lays down the law—prescribes the rules—and it is there

positively and expressly declared that the property must be alleged and proved to be the property of another individual.

I care not what the English law says, when our statute declares that the property must belong to another individual.

And now an attempt is made to show a special property in the men in whom the actual, the general property is laid ! How are statutes to be construed ? how is the criminal code to be construed ? Is it to be done in such a way as, if possible, to make it reach a man ? in such a way as to make it cover a case ? is it to be stretched ? is it to be strained till it fits ? If so, America, like England, may boast of having a Jeffries.

But our code is by itself ; it has no reference to common law ; it is a code of enacted offences. Crimes under our laws are specially defined. Certain acts, or certain acts done in a particular manner, have been laid down as criminal ; and where, as in our state, statutes define what shall, or what shall not constitute crime, the common law definition is dispensed with. When statutes have altered an offence, enlarged or limited the boundary of crime, it is for the Court to give such construction to those statutes as it may deem proper : it is for the Court to say whether it will give such a broad construction to the statute as will cover this case. What the statute means when it speaks of persons, it means when it speaks of property. When it speaks of persons, it means natural persons ; and so when it speaks of property, it means general property : when it speaks of ownership, it means general ownership. This witness proves that the press was not owned by Godfrey & Gilman, that they had no property in it. Is not that falsifying the indictment ? that alleges that the press was the property of Godfrey & Gilman ; this man disproves it.

Suppose these individuals were indicted for having destroyed this press, the prosecution alleging it to be the property of Lovejoy ? would an acquittal, under

such an indictment, bar another one which should charge the property in the actual owner? If the Court should so construe the statute as to refine and whittle away the law, I put confidence in the jury; I know an honest jury will always rally to the rescue.

Cowles in reply. *Per curiam*. It is unnecessary to proceed. The Court is called upon to put a construction upon the statute. If examined, it will be seen that our lawgivers did not intend to modify any general principles of the common law. Our science of jurisprudence is derived from the English common law.

The Court will hazard the general remark, that no decision can be found where, in ordinary cases, although it is necessary that property in some one should be charged and proven, any distinction is made between a general and special property. I defy gentlemen to produce such an authority. What the statute intends when it speaks of property, is simply that the property alleged to have been destroyed should be charged as the property of another, which may be either a general or special property.

The jury are the judges of the law and the fact; and if the persons in whom the property is laid have either a general or special property, it is sufficient for the jury to consider whether the law arising on such facts is sufficient to satisfy the allegation in the indictment as to ownership.

The objection is therefore overruled.

By the Witness. When we receive property on storage we consider ourselves responsible to the owner for any loss or damage while it is in our hands. We had a case a short time ago where we had to pay the damage which the property sustained while in our possession. We have been engaged somewhat extensively as forwarding merchants. We now turn over such business to another house, although we do receive and forward some goods for some few friends.

Q. By Cowles for people. Are you responsible to any one for this press?

Q. Objected to by defendants' counsel, but objection overruled, and a bill of exceptions tendered.

Ans. We paid the charges upon it.

Q. By same. Have you paid or do you expect to pay any thing for this press?

Ans. I will state the facts. When the press was sent for, the one that was taken from Gerry & Weller's store, and destroyed, I had an interest in it, to the amount of \$100. The press was destroyed, but not the types, and this last press came on to supply the place of that one.

Q. By Linder for defendants. Who contributed to that first press you speak of?

Ans. Deacon Long of Upper Alton, and I think a number of gentlemen at Quincy, but I don't know who they were. I subscribed first, I think, and I believe I did not see the paper after I set my name down.

Q. By same. Did Mr. Godfrey subscribe any thing towards that press? **Ans.** He did not.

Q. By Sawyer for defendants. Who compose the firm of Godfrey, Gilman, & Co.? **Ans.** Benjamin Godfrey, and myself.

Q. By same. Is there no one else interested in it? **Ans.** Not at present. Originally my brother, Arthur, was interested with us, but his death dissolved the firm.

Q. By same. Are not your brother Arthur's heirs interested? **Ans.** They are not.

Sherman W. Robbins, was now recalled by the Government and sworn. My testimony would corroborate that of Mr. Krum's up to the time he addressed the crowd; soon after that we parted. I went into the warehouse at the time Mr. West went in. I only went into the cellar room. I recognised but one of the defendants in the building; that one was Rock. I did not go up stairs; I was satisfied they would do no injury to any of the property in the building, except the press, and turned round and came out. I understood the object the mob had was to obtain the press;

I understood this from Carr, and Palmer, and I think Bruchy, but as to him I am not very positive, nor am I certain as to Palmer; there were two or three who made the declaration; they said they would have the press at all hazards. I understood from the mob that they would have the press, if they had to burn the building to get it. I would not swear positively who made the remark. I understood so from Carr; and I think Palmer also, but as I said before, I would not swear positively.

By Cowles for people. State if you commanded Carr and Palmer to disperse, and if so, state whether any resistance was made, and by whom. Objection raised by counsel for defendants, because the individual has been already tried and acquitted for the offence. But per Curiam. The fact is proper to go to the jury as showing the intention of the parties. To this the defendants' counsel tendered exceptions. I don't know that I saw Palmer after the fire was kindled, in the street; I did see him before and desired him to go home. Palmer took hold of me and said, "I must," or I had better go away, that he did not want to injure me; but he said the press would be had at all events. I can't swear whether he said "*he*" or "*they*" would have it; but he did use one or the other of the expressions. I saw Solomon early on the ground, in Short-street; I saw him in no other place; he was doing nothing; he took no part as I saw; he was running about; I don't know that I heard him say any thing till I heard him say he was wounded. I saw Morgan all about; he was crazy or drunk; I thought he could not have superintended any thing; he made a great noise; I did not see him do any thing. I saw Dr. Beal, but I don't know where or at what time; I think it was when the press was first thrown down; he had no arms as I recollect. I saw Jennings; he had a gun; it is reported that he has gone to "parts unknown." I did not see Jacob Smith, nor Butler, through the evening to recognise them. I saw Carr, when I first went up

to the place, and afterwards two or three times; he requested me to go in the warehouse and see if the people there would give up the press. I understood from him that they had determined to have the press. I don't know that I saw him after that time. I recognised Rock but once, and that was when I went into the building after the press was given up. The press was pitched out from the upper story on the ground, it fell on a stone I think. I saw Bruchy, but don't recollect where. I don't know who broke up the press; when I left no blow had been struck upon it. When I left I went into the counting-room and staid till morning. I think the people inside were compelled to leave. If they had remained they would have been burned up. I know of their having been shot at as they were leaving the building, only from report.

Cross-examined. At the time I met Palmer he was doing nothing; he was someway from the warehouse in the street, probably walking this way; I did not see him doing any thing that night; I saw him three or four times between the time Bishop was shot and the time the building was fired; he was doing nothing; he was anxious I should go into the warehouse and see if the press could not be given up; he appeared anxious that nothing should be injured unless it was the press; he said the building would be destroyed if the press was not given up; he wished me to go in and see if I could not persuade them to give up the press; he seemed to think that if it could be given up it would save burning the building; I do not know that he spoke of himself. I don't know who threw the press out nor who broke it up. I don't know whether Rock was where the press was or not; I saw him on the floor of the first story; I can't say whether he went farther up or not.

The court at this time twenty minutes past 1 o'clock, adjourned till 2 P. M.

At the opening of the Court in the afternoon Samuel L. Miller was called by the government and sworn.

On the night of the 7th of November last, shortly

after sunset, I noticed people gathering in Second-street. I saw John Solomon. He told me that they were about to attack the warehouse and break up the press—that if they could not get it by fair means, he was afraid they would have it by foul means. He went on to tell me that he should be sorry—that Mr. Gilman was a friend of his—that he did not want to see him injured—that Mr. G. had helped him a good deal, &c. I went immediately to the mayor, and communicated to him what I had heard. He said he could not believe it, but he asked me to remain in town and be ready in case the disturbance should take place. I did so; and about 10 o'clock I saw the crowd collected, and followed them up to the warehouse. I did not see Solomon among them. When the mob was addressed by Mr. Gilman, some one replied to him. Judging from the voice I should think it was Carr. I can't tell what words he used. Gilman stated to them that he was sorry they had come at such an unusual hour to create a disturbance—that he felt it his duty to defend his property—that he should do so, and should do so at the risk of life. The reply was: We don't come to injure you or your property—but as you say you will defend your property at the risk of life, so we say we will have the press at the risk of our lives. There were a good many round in every direction. I can't identify any of those whom I saw except Butler, Carr, and Rock. They went down in the crowd. I would not be certain but I also saw Bruchy. At the time Gilman addressed the crowd they were standing in a line on the bank of the river. I don't know where Butler and Rock were when Carr replied to Gilman. I went into the warehouse with the crowd. West and Robbins went in about the same time—after a little time I saw the house full of people. I saw Palmer in the warehouse about fifteen minutes after I went in. I did not see the press thrown out. I heard it fall; I saw part of it next morning. I saw Dr. Beal around the building on the Levee on the back side of the building. He was forbidding

the boys touching some arms standing there. I was there as a peace officer. I had no orders to be there. I repeatedly commanded the crowd to disperse. I spoke to no one in particular at such times. I was not present when the ladder was raised to the building. At that time I was guarding the door to Dr. Hart's office to keep the crowd from rushing up there where Bishop was. I saw Gilman and the others run across the foot of State-street. I heard guns fired at that time. I did not see where they were fired. I did not see Nutter till all was over. I saw Rock and Beal, but can't say what any one was doing. Stones were thrown by the crowd at first. I saw some people throwing stones who were not indicted; but none of those who are indicted.

Cross-examined. When Gilman and others run across State-street they run quite fast. Some one of them fell down. They had no arms at the time. Beal forbid the boys taking any thing away. He said he did not want any property injured, nor any thing taken away. I saw Palmer but twice, once with the Mayor and Mr. Robbins, and again after the affray was over. Palmer asked Weller (one of those inside, and who had been wounded) how he felt. When I saw him he was not disorderly. I saw no one in the warehouse who was disorderly. There was not much riot by the crowd in entering the building. Mr. West led the crowd in.

Q. By Linder. Was you standing by when Beal said, now boys we must hang together? Ans. I heard nothing of the kind.

Anson B. Platt called by government, but set aside.

Aaron Corey. I know but little that happened on the night of the 7th. I was on the ground. Shortly before the building was fired I saw there several of those indicted. I don't know who first said "fire the building." I don't know who brought the fire. I saw the man go up the ladder. I can't swear positively who it was. I heard a gun—then a cry of fire the

building. I don't know who cried out to fire the building. I did not see Carr. I saw Dr. Beal; he had arms by his side. I saw Rock; he had on different clothes than I ever saw him wear before or since. I don't know about his hat. I was there till all was over. I saw a great many in the building. West asked me to go in with him. I did so. We went in on the north side. The crowd came up the stairs from the basement story. I inferred from that that they came in on the south side. I saw Beal inside, and Rock and Palmer about the building somewhere. I saw Solomon that evening. I saw him opposite Marsh's building, in the street. He told me he had three shot, and I think he said in his back. Butler I don't recollect, nor Bruchy. I did not see the press thrown out. I went to the back side of the building soon afterwards; there was a great crowd there; stood there but a few moments. I did not recognise Carr, nor Beal, nor Butler, nor Morgan, nor Nutter, among the crowd. I did not see the press broken up nor thrown into the river.

Cross-examined. There were a great many people in the building; when I first went into the building I went in on the north side with West; the second time I went in on the south side; there was quite a rush at that time, should think fifty people; there were a good many people there who had not been engaged in the crowd; I saw Judge Martin in the 2d story of the building.

Joseph Greeley called and sworn. I did not see Solomon nor Palmer; I don't know Morgan; I saw Dr. Beal; I don't know whether he had a gun or not; I saw Jennings, he had a gun on his shoulder; I saw Nutter when the press was broken up; Butler I saw in the early part of the evening at the Tontine Coffee House; he was excited, was swearing about Abolition and the press; he said he would have the press any how. I did not see Carr, I don't know at all, nor Rock; Bruchy I saw when the press was broken up. After the fire was put out I went down to the bank of the river; when I

got there Bruchy was staving up the press. Some one said, Fred, you have done enough ; I went up into the counting-room. Mr. Lovejoy lay there dead. I don't know that I heard Dr. Beal speak during the evening ; I did not go to the place till the bells rang for fire. At the time they were breaking up the press I saw Dr. Beal looking on, but I did not hear him say any thing.

Cross-examined. Mr. Krum stood by my side a part of the time while they were breaking up the press. I spoke to him. I think that I stood there when Mr. Krum came up. I don't know which of us left first.

Samuel Avis called and sworn. I know but little about the matter. I was not there till the bells rung. I recognised a number of people. I did not see Solomon nor Morgan ; I did see Dr. Beal and Palmer ; I did not see Nutter. I saw Jennings with a gun. Jacob Smith I don't know, nor Bruchy, nor Butler. I saw Carr, I thought I saw Rock ; I saw a man whom I took to be Rock, although he was differently dressed than Rock usually is. Dr. Beal was armed, was exulting, said he would kill, or would like to kill every damned abolitionist in town. He did not say he had killed any. I thought he said it in joke. I was not afraid of him, although he said I was an abolitionist. The press had been thrown out. I saw him on the upper side of the building. Dr. Beal was in pretty good spirits. I saw no one engaged in breaking up the press ; the crowd was so great I could not get near enough to see who was busy. I don't know that I saw any of the defendants in the building. I was not there when the crowd entered the building. I presume I was in the street before the press was thrown out. I saw none of those who are indicted enter the building, or have any share in breaking up the press.

Edmund Beal called and sworn. On the night of the 7th of November last, John Solomon was the first man I saw on the docket, and soon afterwards Butler. I think about the time Bishop was shot, I heard the

voices of different persons, some cried, there goes an abolitionist broke out of the house; some said shoot him, some stone him, some throw him into the river. I saw somebody pick up a stone at the time. Solomon came along up where I was standing; that is all I know of him; didn't know Morgan, nor Beal, nor Nutter; I saw Smith; he appeared to be quite cool; exhorted the "boys" not to be intimidated because Bishop was shot; told them they had better go up and make a finish of it. Butler I did not know, Carr I did not see; James M. Rock; that is the man I did see; I saw him with twenty or thirty persons when they were marching up to the warehouse; Rock came to me and asked what I wanted; I told him I came after my boy; he pointed him out to me, and told me to take him and be off; said I had better go home, and I did so, according to his orders. However, I soon returned; came down and stood near the post at Mr. Marsh's store. I saw the flash of the gun when Bishop was shot; they brought him up by where I stood to the Doctor's office. Soon after that I saw Rock pass by with a ball, or bunch of fire in his hand, swearing that he would burn down the building, and all in it. I don't recollect of seeing any others of the defendants; I don't recollect seeing Frederick Bruchy. I did not go but little further than the corner of Dr. Marsh's drug store, during all the time.

Cross-examined. It was between 11 and 12 o'clock when I saw Rock pass by with the fire, I think. I saw no one else carrying fire. I stood in the same place most of the time. I went home once or twice during the riot; once soon after Rock passed with fire, and staid a few minutes; I saw fire kindled in the street soon after Rock carried it by, and soon after that I saw a ladder raised to the building. It was perhaps 20 minutes after Rock passed with the fire, before I saw fire put to the building: I went home between and staid a few minutes; I was a good deal concerned about the matter, and watched the man who had the fire

pretty closely ; I had as much anxiety as any good citizen would have had, I think.

John H. Watson called and sworn.

My history will be short : I only saw two of the persons indicted, John Solomon and James M. Rock ; I saw Rock at the corner, near Dr. Marsh's store, and Solomon in Dr. Hart's office ; Solomon came in and said he was shot ; upon examination, one or two shot were found in him ; in his arm, I think ; as I came down from the Doctor's office, I saw Rock ; he was doing nothing ; I left, and came down to Hawley, Page & Dunlap's till all was over ; it was about two o'clock ; I then went up ; all was still.

Webb C. Quigley. On the night of the 7th of November last, I went into the Tontine. There were a number there ; they went out into the street, formed a line, and marched up to Mr. Gilman's warehouse ; I followed, and went into one of the unfinished buildings. The mob drew up on the side next the river ; Gilman addressed them ; some one replied to him ; I supposed from the voice it was Carr ; the mob soon started to go up to the north end of the building ; I started to go up to the corner of the penitentiary wall ; some one cried out, there goes an abolitionist ; some one cried out " shoot him," some " throw him into the river," some " stone him." Morgan run up to me, and swore if I did not fall into the ranks he would kill me. Bruchy came up, made some remarks, and they passed on. Beal came up to the penitentiary wall where I was, and staid there a little while ; he had no gun with him ; I saw Rock coming down the hill in State-street with Dr. Jennings ; he had a keg in his arms ; looked about the size of a keg of gunpowder ; he passed me ; I did not ask him what it was. I saw Morgan ; he was running from home in his shirt sleeves and bare-footed, told some one after his gun. The Mayor stopped him ; Morgan asked the Mayor how he would like to have a damned nigger going home with his daughter. The Mayor said, not very well. At last he said, well, Mor-

gan, all I have to say is, don't let them hurt you. I went up to the penitentiary wall ; was at the corner of the wall when Bishop was shot. Dr. Beal went down and came back, and said he thought he was not hurt much. I was there when the press was thrown out ; saw a man beating upon it ; could not see his face ; from the dress and size I took it to be Nutter ; he had a great-coat on. The people, when they left the Tontine, formed in line ; I did not see Solomon, nor Beal, nor Jennings there. I did not notice Palmer ; they were ranged round the walls in the Tontine ; Carr was carrying round liquor to them. I saw Butler, Rock, and Bruchy there ; I did not hear them say what they were going to do. I did not see Carr, that I know of, after the mob left the Tontine. I was standing at the corner of the penitentiary wall when Bishop was shot. I heard the crowd say that Bishop was standing at the corner of the warehouse when he was shot. When Bishop was shot Dr. Beal went down that way, and came back and said that he did not believe he was much hurt. Beal had no gun that I saw. I went into the warehouse ; saw none of the defendants in there, that I recollect. When I was in the warehouse, Smith came down and cried out, "Solomon, where have you been ?" "I have been up there and thrown some stones." He, Smith, told how many stones he had thrown, but I don't recollect the number. I don't know what reply Solomon made : Morgan was drunk at the time I saw him.

Q. By Linder. Were there not a great many people there ? *Ans.* Yes.

Q. By same. Did you see Mr. Murdock there ? *Ans.* No.

Q. By Murdock. Did you see Mr. Linder there ? *Ans.* No.

Solomon Woolters called and sworn. I was in the city on the night of the 7th, but not at the warehouse. I was sleeping soundly at home when the tragedy took place. I know of no previous preparations having

been made. I expect the "boys" were afraid to let me know any thing about their arrangements. I went through Second-street between nine and ten o'clock that evening. I saw no one passing; and there were but *three* lights burning in the whole square. I expected likely something was brewing, and came down to see if there were any preparations for the attack, or any interruption in the peace likely to take place. I went home believing no attack would be made that night.

The people here rested their case; and in behalf of the defendants Seth T. Sawyer, Esq., was called and sworn.

I know but little about the matter. The Mayor called upon me that night (the night of the 7th) among others. I had been in his office a little while before, and had been in my office but a few minutes when the Mayor came in and informed me of the disturbance. He requested me to go and get Judge Martin. I went as soon as I could. When I came back and got on the ground Bishop had been shot, and a great many people had collected. I was there near the Mayor when he received the shot. We both took to our legs. I came into Second-street. There I saw Nutter; and I was with him a long while. I saw some persons carry a ladder along; but I don't know who they were. Saw the man pass with the fire in his hand. Don't know who it was. Don't know whether it was Rock or not. I saw the ladder raised to the building. Nutter had been with me all this while. I came away about that time; was not there when the mob broke into the house, nor when the press was broken up. I went back again to the ground before a great while, and went into the counting-room of the warehouse. Nutter did not appear to take any active part while I saw him. I had no idea that he had, or intended to have, any part in the affair. I don't know that I know any thing else about it.

Cross-examined. I saw, I should think, 150 people when I first got on to the ground. I recognised Solo-

mon, Morgan, Beal. I saw Beal when the Mayor made his address to the crowd. At that time he stood nearly opposite the Mayor. I saw Solomon in Dr. Hart's office. He had some shot in his right side; they were in his right leg, arm, and side, I think. He was tolerably well peppered. The shot were only skin deep.

Alexander Botkin, one of the Jurors, sworn. I saw a man carrying fire through the street. He passed near the post at the corner of Marsh's store. It was a short time after Bishop was shot. The last time I saw the fire, was when it was kindling in the street. I know the man who carried the fire. I know him well. *It was not Rock.* I should not think it was so late as eleven o'clock when the fire was carried along.

Cross-examined. I had no conversation with Rock, nor with any one in particular. At one time I saw Smith, and I had a conversation with him. Exchanged a few words only. The person whom I saw carry fire was about Mr. Linder's size, (though it was not him.) "He was thinner and more stoop shouldered than Rock." I did not see the building fired. I knew afterwards that preparations were made to burn or blow up the building, if it was necessary to do so, to get the press. I did not know this till the next day. I did not see the ladder carried along. The man who carried the fire along, as he went down the street was running. I asked him where he was going. He said it was none of my business. As he came back with the fire he was coaxing it. It was not a large bunch or ball of fire.

Judge William Martin was called upon to state what he knew, and said that he did not arrive at the scene of action until late. He saw the person go up the ladder, and put fire to the house. Didn't know who the individual was. Didn't know whether it was any of those named in the indictment; that the distance was so great from where he stood that he could not recognise the person; that the ladder was

rather short; and he thinks the man who went up the ladder had to reach up over the end to put the fire on the building; that he saw Rock but twice that night; that when he first came to the scene of the riot he went into Dr. Hart's office, and examined the man who had been shot; that he soon came down, and then saw Rock on the corner of State and Second streets—who had a gun—and was in an altercation with young Princharde concerning abolitionism; that he interposed and stopped it; that he returned to Dr. Hart's office; remained but a few moments; came down; passed up Second-street; that the mob were then attempting to raise the ladder to the building; they were fired upon from the corner of the warehouse; that the firing dispersed the multitude, and the ladder was dropped.

That he next saw Rock running down State-street, with a gun in one hand and a large bucket in the other, which he professed to have procured for the purpose of putting out the fire. That he saw some one with fire in his hand; that the fire which was put to the house was taken from the street; that he saw a person going through State-street with fire; that it was not a *large* ball of fire; that the man who had it was going deliberately; that he walked in the centre of the street; that he did not observe him particularly till he had got to the west line of State-street; that he spoke to Rock, but not in regard to the riot; that there were 100 people standing as spectators, all, or most of whom being owners of property, had a deep interest in the preservation of good order; that he applied to many people to aid him, but that he found no one who was willing to assist in the suppression of the mob; that he did not use his authority as a peace officer, because he was satisfied it would do no good.

That he saw Solomon that night, but did not see him doing any thing; and he was standing, when he was shot, somewhere near the Penitentiary wall; that Mr. Krum (Mayor) and himself were together part of the evening, though he did not hear the Mayor's

address; that he saw Solomon a moment, who told him (Martin) that he had been shot; that he himself went no nearer the scene of riot than the north side of Second-street; that the fire was communicated to the roof of the building on the end farthest from the river.

That he saw Palmer, but none of the others named in the indictment, except as before stated; that it was dangerous to have gone very near the assailants; that at one time he asked Smith, one of the defendants, if something could not be done to suppress the riot, and that Smith replied that he would help if any one else would; that he saw Beal—passed him and spoke to him—but what was said he can't tell—does not recollect.

Shemwell called and sworn. I saw Nutter the evening of the 7th. Was with him in a private house in the city when the riot commenced. We went out when we heard the noise. The crowd had marched up to the building then. We went to the corner of Marsh's store, and stood there; I don't know how long. I was with Nutter during that night. I saw him make no attempt to do any thing I thought wrong. He said nothing. We walked about. I was standing near when the people went out of the house. We were on Water-street when the press was thrown out of the building. Nutter said then, "Let us go home." We went in to see Lovejoy. I was with Nutter all the evening, and could have seen him if he had done any thing. Nutter picked up a piece of the press after it had been broken up, and said it would make a good thing for painters to rub paints on, or with, and he dropped it again on the ground. Nutter had on a blanket coat.

Cross-examined. I did not know any one who was engaged in breaking up the press. I left soon after the press was broken. Nutter and myself were together all night. I don't know whether Nutter threw the piece of the press which he picked up into the river or not. I did not see him throw any stones at the building. He had no gun. Nutter and myself came down

that evening from the upper town, after we had our supper. I had business in the city to do. I asked Nutter if he would come down. He said he had heard that the press had arrived, and asked if I supposed it would be broken up that evening. I told him I thought not. We each had business in the city. We went to Mr. Mooney's house. I live in Upper Alton. Have lived here three years. Am but little acquainted in the town (city). I did not hear that there was to be any row. I heard the press had arrived. I don't know of any one's coming up to our village to let us know that the press had come. I don't know how I heard it had come. I was not invited to come down and assist in breaking it up. I heard about the arrival of the press late in the afternoon. I knew I had business to do in the city before that time. Nutter asked me if the press had come. I don't know why he inquired. I heard of no preparations going on to break it up. Nutter asked me if the press had come, and if there was going to be a mob that night. I told him not that I knew of. I did not get through with my business that night. Had business with Mr. Mooney. Mooney formerly lived in Upper Alton, and he has got two or three pretty daughters. I am a single man. Nutter staid with me—in my company. My object in coming down was to do some business with the lady. I agreed to do some business with her for another lady. I don't know what Mr. Nutter's intentions were in coming down that evening. I know he had no hand in breaking up the press.

The evidence here rested.

Murdock in opening.

I shall not occupy much of your time, gentlemen of the jury, in opening this case to you, on the part of the prosecution, but shall leave the burthen of the argument to my able associate, who will conclude. Indeed there is but little room for argument. The indictment in all its parts is fully and clearly proved; and if it were not for the lawless spirit which has long pervaded our land

and swept over and desolated our city and rested here ; if I did not feel that it was my duty to impress upon your minds the necessity of vindicating the law in its majesty, I would say less. The offence charged on the defendants and so fully proved, is one that strikes at the existence of social peace and security, and tears away the barriers which the law has thrown around the citizen, his life and property. It aims at government itself, for a time prostrates its power, and rears up anarchy to run lawless over our dearest privileges. What is government worth unless it affords protection to property ? What are laws worth unless they bring punishment upon the head of offenders ? What are governments and laws worth unless the jurors of the country give full efficacy to their provisions ? Is government valuable ? Shall the laws which the people, through the proper authority, have passed, intended for the protection of the citizen, and the punishment of offenders, be of any practical operation ? It is for you to say, for through you only can they be made operative. If the facts of any offence present a case deserving of punishment, then do these call upon you, most imperatively, for a verdict of guilty. Gentlemen, reflect upon the terrible malignity of the facts disclosed. The defendants assemble on the night charged in the indictment, for the purpose of committing an act long deliberately formed, enter one of the groceries, (those sinks of corruption which so much disgrace our city,) then range themselves in order around the walls of the house, drink down a glass of maddening alcohol, and from thence, infuriated, proceed to the storehouse of Godfrey & Gilman, with design of forcibly entering it, and destroying a printing press, and complete their purpose. Gentlemen, shall the perpetrators of an act so lawless, so diabolical, go unpunished ? shall they be permitted to live among us unbranded by a verdict of guilty ? Shall it be said that you permitted such an outrage, scarcely denied, to go unredressed ? Shall it go forth to the world that property is unsafe in Alton ; that law is pow-

erless ; that juries are the shields of crime ? I will not, gentlemen, suffer myself to believe, that you will permit your prejudices to influence your verdict. You will regard the solemn oath you have taken. What has the private opinion of any individual to do with the question of guilt or innocence ? What has the exciting subject of abolition to do with the issue formed between the people and the defendants ? Are the defendants guilty as charged ? is the only question you are sworn to try.

But, gentlemen, anti-slavery with all its horrors will be glowingly portrayed. You will be told that a verdict of guilty will be an approval of its principles, and the triumph of a party whose object is to sever the Union, to rob our citizens of their property, to excite the slave to murder his master, wife, and children, and to plunge our common country into the horrors of an exterminating civil war. I have too much respect for you, gentlemen, to believe that you will be driven from the line of your duty by such considerations. If there is one privilege more dear to us than another, it is the right of free discussion ; the liberty of the press ; the freedom of conscience. These have civilized and elevated a world ; and better, far better, that all the evils which it is predicted abolition will bring on the country, should be actually fulfilled, than that these dearest rights of freemen should be surrendered, and the Constitution of your country, bought with the blood of freemen, and sanctified by the memory of our fathers, should be nugatory. Then, indeed, will we be slaves. Yes, gentlemen, the liberty of the press is inseparably connected with our freedom, and the day that high prerogative of a free people is given up, will be the birthday of a nation of slaves.

Gentlemen, in this offence, there are no accessaries, all are principals. The act of one is the act of all who participated in the commission of the common design. I leave the case with you, confiding in the ability of my friend, Mr. Cowles, to strip it of the difficulties and

doubt the ingenious counsel for the defence will endeavor to cloud it with.

Hall. In the few remarks which I shall make to you, gentlemen, I shall aim to be as brief as possible. I appear before you as the Counsel for Josiah Nutter solely. I appear before you, no less from a conviction that he is unjustly charged of being concerned in the commission of this offence, (a conviction which is forced upon me by my whole acquaintance with him,) than from a feeling of entire satisfaction, that the evidence is not such as to warrant you in returning against him a verdict of guilty. The indictment charges my client, jointly with others, with having on the night of the 7th of November last, with force and arms, entered the storehouse of Godfrey & Gilman, and with force and violence broke and destroyed a printing press, then and there found, and being the property of the said Godfrey & Gilman. The question presented for your consideration here, is a bare question of fact. Did Nutter enter? Did he break up, or was he concerned in destroying the press? Gentlemen, you hear nothing of Nutter till the press was thrown out from the building, as having been concerned in any acts of violence. No one sees him; none of the civil officers, who, if they were unable to suppress the mob, were at least active in discovering the leaders of it, swears to his presence on the ground; none of the whole array of witnesses drawn here by the people testify to any act of violence done by his hand. He was not seen in the streets; he was not in the coffee houses; he was not recognised as having been engaged in the attack upon the building—and it was not till the affray was over, till hundreds of your citizens were also attracted to the spot where the act of violence was committed, that he was discovered among the crowd. But other individuals were called, by whom we are enabled to prove to you where he was, and the sort of feeling he had in relation to this matter.

Mr. Sawyer says that he was with him a good part

of that evening; and that in conversation with him Nutter expressed his disapprobation of the proceedings of the mob.

Fortunately, however, gentlemen, we have been enabled to show to you by one witness how this individual spent that evening. Mr. Shemwell says that he came from Upper Alton with Nutter that afternoon; that they came to visit at the house of a friend; that while employed in making that visit, the disturbance commenced; that they had a curiosity to see what would be done, and went up towards the warehouse. But, gentlemen, no one will pretend before you that all who were present, idle spectators of that affray, were guilty of the crime actually committed. If such is the doctrine, heaven save the Court, this Jury, this Bar, and, I doubt not, two-thirds of those now within the walls of this room. This witness states to you that after the affray was all over, Nutter was finally persuaded to go to the building, and here it is that the witness for the people first spied him. Here is the first evidence of his being upon the ground at all, and you will judge how far this goes to his conviction.

I do not deny that Nutter picked up a piece of the press; but I ask you to say, under the evidence you have as to his declarations at the time, that it was at most but a careless act. This would be a good thing for painters to rub paint with, was the remark made by him, as, after having finished his examination of the piece of the press he had picked up, he let it fall to the ground. Why, gentlemen, what stronger evidence could you have of this man's intention? what more conclusive proof could be given that this man was drawn there by mere motives of curiosity? Why is it that you hear no such remark from the mouths of other individuals? Would it be likely, gentlemen, that this man would have made a remark like that, if he had just come in, heated by the struggle, and glorying in the triumph which he might have achieved? No, gentlemen, no such thing! The remark itself, unconnected

with any other fact, would be proof positive that his intentions were not criminal in being there that evening.

Besides, if his intentions had been criminal ; if his object had been the destruction of the press, think you he would have kept aloof till that late hour ? think you he would not have been seen and identified, as active in the perpetration of the crime ? think you he would not have been recognised and sworn to as present, aiding and abetting, before the press was actually destroyed ?

Gentlemen, his remark at the time he picked up the piece of the press is no more inconsistent with guilt than all his actions.

Why should he have come forward at that late hour, when the battle had been fought—the victory won—when the house had been taken—the press captured and destroyed ? What object could he have had in making himself so active—so conspicuous after the affray was all over ?

No ! no ! the proof, if the evidence proves any thing, shows fully and conclusively his entire innocence of the crime alleged against him. With a simple remark as to one other fact, I will leave the case. The Government will ask you to believe this man guilty, because one witness has sworn that Nutter threw the piece of press which he picked up into the river. But, gentlemen, may not this witness have been mistaken ? Is it not just as likely that the piece rolled into the river, as it fell from the hands of Mr. Nutter, as that he threw it there ? Is it natural that directly after a remark which denoted entire innocence of criminal intention and design, he should have committed an act which would at once fix guilt upon him.

Gentlemen, to constitute crime, there must be not only an act done, but done from a bad motive, from a bad design. There must be a criminal intention, or the charge alleged against Nutter fails entirely. I leave the fate of this defendant in your hands, confident that you value too highly the rights and liberties of a citizen,

to sacrifice them to the prejudices of an excited community; trusting that you will jealously guard his interests; knowing that you will require a strong array of facts—proof strong as that from holy writ—before you will deprive him of his good name, and doom him to a felon's punishment.

Sawyer for Prisoners.

The duty of opening the case in behalf of the defendants has devolved upon me, and I will promise you that I will consume no more of your time than is absolutely necessary to enable me to do justice to the case. The trial is of vital importance to the defendants, inasmuch as it is with you to say whether they shall go hence free, or with the judgment of the Court pronounced against them, for a violation of the laws of the land. It is of deep interest to the community too, inasmuch as this is the last of all the indictments presented by the Grand Jury, and which grew out of the Riot which took place in this city on the night of the 7th of last Nov. The testimony is so insufficient to warrant a conviction, that I would not address you at all, if, provided I said nothing, it would not seem that I was negligent of the duty of my profession.

In the first place, is there any testimony that these individuals did enter the storehouse of Godfrey and Gilman and break and destroy the press? for that is the charge brought against them. You are not to try the question whether or not any of the citizens of Alton, on the night of the 7th of Nov. last collected in a riotous and tumultuous manner; and therefore you have nothing to do with a greater part of the testimony. Then what is the evidence? Mr. Broughton was first called, but he knew nothing about it. Next Mr. West came, and what says he? Why he told you what information he received from Solomon. But is that any evidence that Solomon was concerned in the breaking up of the press? Where then is the evidence that Solomon was concerned? Did his meeting with West prove it? I think that upon your oaths you will say

it did not. Then he speaks to you of stones thrown and guns fired—and then of the fire being set to the house—then he comes to the entering into the warehouse, and he tells you that the crowd rushed in—but does he tell you there was any violence used to break in to the warehouse? There is as yet no evidence that any person used any. But West did not see the press broken up. He tells you that he saw Palmer, Butler and Carr, but that he did not see them do any act of violence—he did not see them do any thing. There is no question, gentlemen, but a number of persons assembled at that time and place; and that acts of violence were done, but these acts are not brought home to the defendants. Then comes Mr. Krum; and his testimony is but a reiteration of what West swore to. Where is the evidence which shows that any of these persons were guilty of breaking the house or press? Krum swears to no such thing. All he testifies to is that he saw Beal at the back part of the house and that Beal said something about the boys hanging together; but does that prove that the defendants were guilty of the charge brought against them? But may not Mr. Krum be mistaken? Why should not Mr. Greeley have heard this declaration? from Mr. Krum's own showing he was by his side. There is no evidence then from Mr. Krum of the guilt of the defendants; not the least particle. There is no question but that these persons assembled before the warehouse; no question but that they were noisy; perhaps a little riotous; but that is not the charge. If the indictment is not sustained by the testimony, it is not the fault of the defendants. The prosecuting attorney cut the garment, and if he could not make it fit, he can't expect us to. Sawyer proceeded to state that all those who were spectators, and who did not assist to suppress the riot might have been indicted as well as the present defendants.

Per Curiam. I wish to state that though the citizens did not aid me, I was satisfied it was on account

of the great excitement which existed ; and from a consciousness that it would require a strong and well organized force to quell the Mob. We had no such force in the city, and the acts of those outside passed in such quick succession that the citizens had no time to adopt any efficient means of resistance. I make this remark, that it may not be supposed I thought the citizens would not have aided in suppressing the mob, had they been properly organized.

Sawyer in continuation.

It is in evidence that the Mayor addressed the crowd. Now, by the 113th section of the criminal code it is enacted, "That if two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, sheriff, coroner, constable, or other public officer, persons so offending shall, on conviction, be severely fined in any sum not exceeding fifty dollars, and imprisoned not exceeding one month."

Now that is the law for the prosecution to have indicted these persons for violating ; but they have chosen to take a different ground ; they have chosen to charge us with destroying this press, and I suspect they will think, as the devil did when he heard the pig squeal, that there is a great cry and little fleece.

But this press is the firebrand which has produced all the excitement and disturbance out of doors ; this press is the thing kept constantly in mind—its destruction is what is so horrible ; and I suppose that these friends of the press thought if they could only convict these few poor men of having destroyed it, that it would be a crown of glory on their heads. The prosecutors have therefore brought their indictment for the destruction of this press, and they must abide it. If, however, in trying to prove that these persons destroyed the press, they should prove that they committed any other offences, you are not to try them for it, at least not now.

Then Mr. Robbins was called, but he knew nothing more than Krum. He knew of no riotous conduct; he saw no force or violence used in the house. Does his testimony prove any thing? I contend not.

Aaron Corey was called next. He knew nothing, except that he heard a great noise; and how far does his testimony go? Mr. Miller came next, and he says he saw no man engaged in a violent manner in the house.

Mr. Quigley was called next, and he swore that he saw people at the Tontine; that he heard Gilman address the crowd, and heard a man reply to him—he thought the man was Carr; that he stood in the door of the warehouse, and heard Smith say that he had been throwing stones, and that is all he knows. He also says that he saw Nutter with a great-coat on. But does all this prove the allegations in the indictment. He also tells you that he saw Beal at the Penitentiary wall, and that he had no gun; and I presume Quigley must know about this fact better than any one else, as he had better opportunities for knowing; and I ask you to presume that Beal had no gun until he picked up one of those which were left by the foe in their retreat.

Quigley saw none of the defendants in the house.

Samuel Avis came next, and he knows no more than the others. He saw Beal, and heard him say that he would kill, or he would like to kill all the damned abolitionists in town; but the witness says that he thought the remark was spoken in jest; and a pretty good reason I think you will say he had for his supposition, since, being an abolitionist, he is here to tell you what he saw and heard that night. Apply this evidence to the indictment and does it prove any thing? I think not.

The next witness is old man Beal, and he swears to nothing at all. All you can get from him is, that he was afraid; that he dare not move from the post up by Marsh's store.

This is all the testimony, and these are all the witnesses on behalf of the prosecution.

And now let us recur to that on the defendants' part.

The first one introduced was Mr. Gilman, whose name figures in this matter with considerable —, any thing you have a mind to call it, gentlemen, and he swears that he did not own the press. Then, if you find the defendants guilty of the charge in the indictment, will you not find contrary to Gilman's testimony. The people must prove what they charge; and it turns out that this Mr. Gilman was not even the special owner of that press; that he was not the bailer of it. He swears that the press was consigned to Mr. Roff. Admitting, then, that the prosecution may travel out of the indictment, and prove that he was the special owner of the press. Have they proved it? A bailer is one who keeps property for hire or gain. It is the reward which he receives for keeping the property, which attaches responsibility to him in case of loss or danger. If one of you keep a trunk for me—but without any reward for it—and the trunk is lost, are you responsible? Do the prosecution show that Gilman was the keeper of this press for hire or reward? No, but the contrary, and by their own showing; by the testimony of this very Mr. Gilman, if this press was in any one's possession, it was in Mr. Roff's.

The rule I have laid down is the *law*, and I challenge the production of any other from my aged friend. Gentlemen, there is no further testimony to be commented upon, except that of Shemwell, in regard to Mr. Nutter. He swears to you that he and Nutter came down to the city to do business; that that business was with the ladies; and as he was a single man I shall leave it to you to imagine what that business was. I do not believe Nutter is guilty, because of my own knowledge I tell you that he expressed disapprobation of the doings of that night. Although he might have picked up a part of the press, it is no evidence of his

guilt. If it were, you might be called upon to convict one half the community.

With these remarks I submit the case to your consideration with perfect confidence in the result, knowing you cannot doubt the innocence of these individuals.

Linder for Defendants, in conclusion.

It is now, gentlemen, near six o'clock, and I do not doubt that you are somewhat wearied after the long examination to which you have listened. After a long struggle, I am enabled to have a cheerful prospect before me. Recognising the clear heads and the strong minds of those who sit upon that jury, I feel like a sailor, when, after a long voyage, he catches the first glimpse of land. I have been out at sea for the last three weeks, and, fore God, gentlemen, this is the first sight of land I have had during that period; and it is with great pleasure that I find I am to appear before a jury capable of appreciating the questions to be submitted to them in the further progress of this cause.

The trial by Jury is the greatest blessing we enjoy—it is the greatest boon we have received. It is the shield of the citizen, which is to protect him from the attacks of prejudice and power. It is truly the pillar of fire by night, and the pillar of cloud by day. The citizen may stand upon this prop, and defy the attacks of arbitrary power; and these individuals, hunted as they have been; pursued with all the bitterness and malignity which wealth and talents can command; protected under that shield, and guarded by that prop, may stand erect, and bid defiance to the storm which howls around their heads.

A strong and well organized effort will be made to secure the conviction of these defendants. I am willing to make issue with the prosecution. This occasion will be seized, by the venerable gentleman who is to follow me, as a favourable opportunity to pour out some portion of that invective for which he is so admirably qualified. My remarks will undergo a severe scrutiny. You will be addressed in the cold and chilling expression of puritanical feeling, and the severe

language of the law ; and while I was anticipating the remarks to which you will be called to listen, as I came down to this court-room from dinner, and looking upon the broad current of the mighty river which floats by these walls, I could not help drawing a comparison between the fate of his address in the hands of this jury, and that of the ice which is borne along upon the bosom of the water ; and I could not help feeling, that his address would meet with the same fate in the warm hearts of this honest jury, that the ice finds when it is borne by the current within the influence of a warmer atmosphere.

I know no greater gratification than to appeal to a jury whose hearts are warmed by "sympathy for others' wo."

It will be unnecessary for me to awaken or disturb the feelings which, in time that is past, have distracted this community. I have no object to obtain in so doing. My simple desire, my plain purpose is, to submit to you the facts which have been testified to, and the law which must govern you, and then leave *you* to determine whether these defendants are guilty or not of the charge preferred against them. This is my duty. Your duty is also plain and easy. You are sworn to try the issue made up. What is that issue ? What is the allegation upon the one side, and the denial by the other ? I will present it to you, as it is contained in the indictment, and I ask your careful attention to the charge there made.

The Grand Jurors chosen, &c., upon their oaths present, that John Solomon, and others, now upon their trial, on the night of the 7th of November, A. D. 1837, with force and violence, entered the warehouse of Godfrey & Gilman, and unlawfully, and with force and violence, a printing press, then and there found, the property of said Godfrey & Gilman, did break and destroy.

To this charge the defendants have plead that they are Not Guilty—as charged in the indictment.

Recollect, gentlemen, that that press is charged to have been the property of Godfrey & Gilman, the latter of whom cuts so conspicuous a figure in this whole affair. And when my brother Sawyer was trying to tell you what he thought of the man Gilman's conduct ; was hunting for some word which would convey to you his idea of his actions, I was forcibly reminded of a publication which I once saw, and which was made for the purpose of giving to the world the writer's opinion of the character of some individual or other. After the writer had exhausted every abusive word which he could think of, for fear he had not conveyed his meaning strong enough, he proceeded thus : In conclusion, if there is any epithet in the vocabulary of the English language more abusive than any other, the reader will please to consider it applied.

Then, gentlemen, the charge made against these defendants is, that they entered the house with force and violence. What evidence is there ? whose testimony proves to you that they unlawfully or violently entered the house ? Who entered first ? Why, West led the way. Was there any door broke ? Did any individual swear to you that these persons made use of any violence, more than all of the crowd who rushed into the house, impelled by natural curiosity ? If, from the circumstance of entering alone, you are to suppose that the entry was forcible and violent, then there are an hundred individuals as guilty as these. In the decision of this case you are to inquire about nothing, except the entering the house and breaking the press. You have no concern with the throwing of stones, or firing of guns, in the early part of the riot.

The proof must not exceed the allegation ; one is not the ceasing of the other ; and under this charge you cannot convict these persons of being guilty of another crime. Now Rock and others have been indicted for burglary, and a noll. pros. entered, and under this indictment, you cannot convict them of any

other offence, than that of forcibly and unlawfully entering the house, and breaking up the press.

But it will be said by the counsel for the prosecution, that they do not ask you to convict these people of burglary; but that they have introduced evidence to you to show that high misdemeanors were committed on that night, by way of aggravation.

Is it, however, gentlemen, a necessary consequence, that because these men were upon the spot armed, that they entered the house in a violent manner? is it a consequence, that any door was broken? that any tumult was committed? that there was any violence used after the entry was made? A violent and forcible entry is not proved, from the fact, that there was a rush, when it was known that the house was abandoned; but the jury are bound to presume that the rush was made by men innocent of crime; yet who, from the knowledge of Bishop's and Lovejoy's death, and Roff's and Weller's wounds, were eager to enter the house, that they might early see all the consequences which had resulted from the engagement. West led the way. Corey went in with all the others who were anxious to gratify their curiosity. And these men were as guilty of a violent entry as any others, although they were entirely unconnected with the mob in the other acts of violence and riot. Where is the witness who swears to any act of violence committed in entering the house, by any of those indicted? There is none, and therefore the first charge falls to the ground; there is no pillar to support it; it exists only upon paper, without the least shadow of proof to sustain it.

We then come to the second charge made against these persons, that of breaking up and destroying the press. Where is the evidence to convict them upon this charge? for if you are called upon to convict them, from the mere fact that they stood by and witnessed its destruction, then farewell to the innocence of your Judge, your Mayor, your peace officers, and all those citizens who, from curiosity, attracted by the thrilling

interest of the scene, had assembled to witness the proceedings of that night. All who were there, friends as well as foes, are, upon that principle, guilty of this crime. One man only is proved to have been guilty of breaking the press, and he is not upon trial; no one swears that he saw any of these persons throw out the press; no one tells you that he saw any of them assisting in the act, but, on the contrary, all swear that they first saw the press on the ground, between the warehouse and the river; and Frederick Bruchy hammering upon it, as he had been accustomed, I believe, to do upon other presses.

Nutter only, besides Bruchy, is connected with this press, and what did he do? Why, merely this; he found a piece laying on the ground, picked it up, remarked that it would do for painters to rub paint with, and threw it down again.

This, gentlemen, is all the testimony which bears upon the point in issue. This is all the evidence that has been offered to your consideration, to prove these persons guilty of breaking up and destroying that press.

And, gentlemen, upon the strength of this testimony you will be asked whether you will let these individuals go unpunished? Loud declamation, horrific appeals will be addressed to you, based upon the criminality of the acts done at the first commencement of the riot.

But it is not our fault that we are not indicted for those acts; it is not our fault that the bill of pains and penalties is not broad enough to cover all the offences committed that night. If they were so strongly bent upon proving us guilty of criminal acts; if they expected to convict us of participation in the riot, it was the duty of the prosecuting attorney to have laid his indictment broad enough to have included all the facts in the case. But as it is, the course the counsel have taken puts me in mind of a story once told by Mr. Clay: A fellow wanted a search warrant, to enable him to hunt for a turkey, which had been stolen from him. The magis-

rate, to whom he applied for the warrant, after examining all his form books, said, that he could find no form for a turkey. But said he, I find one for a cow, and I will give you that, and while you are looking for your cow, "perhaps you may find your turkey." Now we stand in just such a situation. The government are attempting to convict us of a riot; of criminal acts done out of doors, done too previously to the commission of the offence for which these persons are on trial, under an indictment for an unlawful and violent entering of a house; and the only way in which they endeavor to prove guilt, is by showing you that certain acts were done, and then asking you to draw a presumption that other acts were done.

They ask you to return a verdict of guilty upon presumption alone. Now I put the question to you, whether if these persons did enter that building with force and violence, from the crowd of people who stood around, from the cloud of witnesses they have arranged upon that stand, the prosecution could not have found some one, some little boy, at least, who saw the offence committed?

They have failed to produce any witness to prove such fact, and that is an incontestable rebutter to any such presumption as the one they will ask you to draw. The same remark will apply to the breaking up of the press.

But it is not worth while to say any thing else about the riot; or about the breaking up of the press. At times, in the investigation of some crimes, it may be more safe to rely upon circumstantial evidence to prove guilt, than upon a connected story. As for instance, in the case of murder. The person who sets himself about the commission of such a crime works in the dark; he selects his time and opportunity so that no one can observe his actions, or defeat his plan; and, from the necessity of the case, we rely upon circumstantial evidence to bring the person to justice.

But this act was not done in a corner: it was not

an outbreak of popular violence, such as is seen in times of revolution ; but it was done at a time when all could see the persons of those so engaged, and was the result of long premeditation. Neither was there any attempt at concealment on the part of those engaged. All openly carried their guns by their side ; all who said any thing on the subject, said boldly, and this too, to your civil officers, as well as others ; that they would have the press at all risks. All the witnesses called, swear that Bruchy was the man who destroyed the press. If any one else assisted, where is the evidence of it ? Now let me ask you one question. You must recollect that where there is a rational doubt of the guilt of a person on trial, the jury are bound to acquit : and can you swear that any of these persons broke that press ? or can you say that any one of them authorized its destruction ? You, as jurors, will not volunteer for the prosecution ; if the people have failed to show the guilt of these persons, you will not lend them your aid ; you will not convict them of this crime upon a presumption that they are guilty. Suppose Dr. Beal was guilty of this crime ; it might have been him, and suppose you say so ; suppose you start with that *presumption*, there is no *evidence* as to his guilt ; and without such evidence, in what situation are you left ? Why, in *doubt* ; and if you are once in that situation, you are bound to acquit.

The law sets too high a value upon the rights of individuals, to permit a conviction upon any other than positive evidence. I regret that the prosecution are in this dilemma. If they had laid their indictment broader, I really think that the "boys" would have stood a bad chance. But the good stars of these men so provided that the indictment should specify but two distinct allegations ; and those of acts done in the house. But the circumstances ! the circumstances ! cry the gentlemen ; the keg of powder ! the stones that were thrown ! the guns that were fired ! the voice from the crowd addressing Gilman ! the fire at the building ! the battle

cry ! the shouts of victory !! Well, what of them ? They don't prove the fact that these people were actually guilty of violently entering the house ; or of breaking up and destroying the press. They only prove the commission of a distinct and different offence. The indictment might have been formed so as to have included these facts ; but the Grand Jury neglected so to do, and we claim the advantage.

I have got the Government upon an island, and I intend to keep them there ; and unless the Government can satisfy you that these individuals are guilty of the crime alleged against them, you are bound to acquit them. Are you to select these eight out of the hundred men who entered that building with them, and say that these, and these only, are guilty ? Are you sworn jurors ? or do you set there as sworn guessers ? You can't say one is guilty and another is innocent. You can't make this selection : you can't be permitted to guess in this way.

But it is a waste of words and of time to comment upon the danger of trusting to circumstantial evidence. Monuments still stand to attest to the fatality occasioned by credulous juries in trusting to such evidence. The books are full of cases to the point. You undoubtedly have heard of the case where an individual was arrested, tried, and executed, for taking the life of his bed-fellow ; the jury having been satisfied from the facts which were testified to, of his guilt. It appeared in evidence, upon trial, that they were both put into the same bed at night ; that in the morning, but one of them made his appearance ; that search being made, blood was found upon the sheets, which was traced from the bed, down stairs, out of the house, by a back way, to the banks of the river, where all further trace was lost. The man's companion was arrested ; the jury convicted him upon this evidence, and he was executed, notwithstanding his denial of guilt. It turned out some time after, that the man who was supposed to have been murdered, made his appearance again in the coun

try : and his story was, that he had been bled some short time before ; that he awoke in the night, found the bandage had slipped from his arm, and that the wound was bleeding afresh ; that he got up, went down stairs, and out of doors to the river, and that while he was there, washing his arm, a press-gang came along and carried him on board of a vessel ; which set sail without his having an opportunity of afterwards going on shore. And this is but one of a thousand instances with which our books of reported cases are filled. Gentlemen, circumstantial evidence is always, *must* always be fallacious ; it is an unsafe basis for a jury to rely upon. *You* are not safe in so doing. All history attests the danger of founding verdicts upon it ; and the darkest spot upon the pages of English history, upon the records of her jurisprudence, is that which attests the credulity of her juries.

And what is the character, what the complexion of this evidence ? It is all circumstantial ; and it seems like occupying and reoccupying the same ground to comment upon it.

I will submit two plain points to your consideration, and leave the case.

And first, has the prosecution shown that the press was the property of any one at all ? They have shown it to be Roff's, if they have proved it to be the property of any one. It was consigned to Roff, and because it was considered more safe at Godfrey & Gilman's than at Roff's, because it was landed there, because it was stored there, it does not follow that it thereby became the property of these men.

I recognise the doctrine, that if I store property with you, and it is taken from your possession, you have the right of action for its recovery. But I do not recognise it when applied to criminal cases.

Have the government shown that any one had property in this press ? Where is the witness who has sworn to the ownership of it ? Gilman tells you it is not his ; but he tells you a long story about it, and

leaves it to you, to draw your own conclusions. Whose was it? not Gilman's, for he swears it was not his:—not Godfrey's, for Gilman swears he did not subscribe to the other press. Whose was it then? Gentlemen, do you believe Lovejoy would have offered himself as a victim for a press, in which he had no interest?

In what light shall we regard this testimony, as to the ownership of that press? Lovejoy was to have been the editor of the paper, which was to have been published from that press; then Lovejoy and not Gilman was the owner of it.

Roff was the consignee, and went to defend it: then Roff was the owner, and neither Lovejoy nor Gilman.

And if it was not the property of Roff, then it must have been the property of those who bought it, and sent it here, and should have been so alleged and proved.

And as to the ownership of the warehouse—the only proof introduced before you, is that Godfrey & Gilman have title deeds to it. It is proved that Godfrey & Gilman were in possession of the building, at the time of the riot, and possession is evidence of title, only in case of the non-existence of title papers. Where there are title papers, the rule applies that the best evidence should be produced—and in the absence of these deeds there is no legal evidence that this firm owned the property.

Then the prosecution have not proved that this building, or this press was the property of Godfrey & Gilman, and all their allegations have failed. The people have proved nothing—just nothing at all—and this day has been consumed in the enactment of another farce.

But one word as to Nutter. The purpose for which he came down to the city, on the night of the riot, cut a considerable figure in the cross-examination of the witness Shemwell. The young man very frankly stated to you, that he came down to do some business for one lady, with another; and I thought, that when that fact was disclosed, common decorum

would have prevented the prosecuting attorney from pressing the point any farther. But nothing would satisfy the prying curiosity of the gentlemen, till they had ascertained that the young men actually, and bona fide, "came a courting." Nutter is the only one of the eight persons on trial who is proved, by the evidence, to have had any thing to do with the destruction of that press. And I will leave to you to say, whether his act was more than the careless act of a curious person. It was inconsiderate perhaps, but I think you will hardly say it was criminal.

The witness Shemwell tells you, that Nutter engaged in none of the acts of violence, which were committed that night; that he and Nutter kept together all the time, and it was natural that they should have done so. It seems that all who had much to do at that time kept together, as much as circumstances would allow them. When you hear of Rock, the rest of these persons who are on trial were near him. Those in the warehouse kept together so long as they remained in the building, and when they abandoned it, they still kept as close together as the speed of the different individuals would allow. And there was old Morgan, running about like a dog in high rye, crazy, as one of the witnesses said. He always takes care to be on the strongest side, and if the defenders of the warehouse had been successful, no doubt he would have exhorted them, "to go up and finish their work," as it is proved he did in this case.

Gentlemen, it is not on suspicion that you will say that these men clubbed together—congregated into a body, and violently entered the building, and destroyed the press. It is not on suspicion, that you will convict these men, even though they are of what the gentleman calls the "genuine democracy." I expect that the democracy will be cut up by the venerable counsel, with all the superciliousness belonging to the well born and well bred. I have yet, however, to learn that an honest jury, will convict a man for the "cut of his coat," or because he is seen in a coffee-house, or be-

cause he happens to fall into what the gentleman may call bad company.

I have said all. And in conclusion, I ask at the hands of this jury, that indulgence which my situation demands. I know abuse will be, and has already been heaped upon all of us. Scarce one has escaped it. I know that this community—that the community beyond our own vicinity, are anxiously waiting the issue of this trial. I am aware, that for the exercise of your good sense, of your reason, in the question of the guilt or innocence of these men, your motives will be assailed, your characters attacked, and the basest and vilest imputations cast upon you. But I rely confidently upon this jury, well knowing that against an independent, honest, high-minded jury, the torrent of abuse will be harmless; that like the rock of Gibraltar, which withstands the fury of the tempest, and the waves of the sea, as they beat against its base, so this jury will stand, proudly erect, high above the storm, while the waves of invective are dashing themselves to pieces at their feet.

Cowles for the People.

Gentlemen of the Jury,—It has become my duty, in closing the argument in behalf of the people, to bring to your minds considerations of duty, and not to distract your attention from the points in issue, or obscure the exercise of sound legal discretion. You have been chosen to stand between the people and the defendants, and while you are vigilantly to guard the rights of persons, you are also religiously to protect and preserve the interests of the government. Your verdict is to determine, whether law or licentiousness is to prevail; whether we are to live under the rule of law, or the "reign of terror." Your duty is one of great responsibility; for your verdict is to decide, whether the enactments of your Legislature, or the law of the lawless, is of greater authority. Your position is one which requires great firmness. You may be infected with that spirit, which has wrought deeds of dishonor, and vio-

lation to your laws and constitution ; you may be infected with that spirit, which has caused a stain upon the character of this city, which the whole current of the mighty Mississippi cannot wash away ; which has cast a blot upon the escutcheon of our State, that ages cannot efface. You may be infected with that spirit, which by the sanction it has given to the violent, illegal, and murderous acts, of the 7th of November last, has made the name of this city a by-word of reproach to all coming generations. Your verdict may legalize riot, may legalize arson, may legalize murder. If your verdict sanctions those acts, it will sanction any and every dishonor, which can disgrace civilized society.

I trust, however, that almost in the words of one, whom many have delighted to honor, you, by your verdict, will say, that the government must be preserved ; that you will prove true to your country, its laws and institutions ; that you will prove true to your constitution, and that you will say, that whenever the evil passions of men burst out in crime, you will apply to them the corrective of the law. I trust that a jury of my citizens cannot be found, who are prepared to sanction these outrages ; those acts of licentiousness, which have struck a vital blow to the best interests of this city, and defamed and disgraced the character of both its rulers and ruled.

But let us turn from considerations like these. And in the first place, permit me to remark, that you are not bound to return a verdict of guilty against all, if you find satisfactory evidence of the guilt of a part only, of those included in this indictment. If you come to the conclusion, that one or more of these individuals, are unjustly charged with the commission of this crime, and still find that any two or more of them are guilty, you can so return your verdict.

And what is the evidence ? Some of the facts testified of before you, are not disguised. The sophistry, and shuffling of the counsel for the accused, could not avail in disguising them. They stand out in too strong

relief to be disguised ; as they were proved too plainly and distinctly to be denied.

Was the warehouse of Godfrey & Gilman entered with force and violence ? Was the press of Godfrey & Gilman violently destroyed ? And were such acts lawful ? Because, gentlemen, it is no matter what principles that press was intended to promulgate. They will not entice the jury, although they inflamed an armed multitude. You, gentlemen, stand between the living and the dead. The voice of him, who would have spoken through that press, is hushed in the sleep of death ; he cannot speak to you from the cold and silent tomb ; he cannot speak to you of injured faith, of broken laws, of a violated constitution ; he cannot speak to this community, of rights which have been trampled upon, or privileges which have been denied to him ; he cannot speak to these men of laws which have been violated, and to those who were his fellow citizens, of duties which they may have disregarded. But by your voice, that press, and those lips may speak trumpet-tongued. It may be a voice which will calm excitement—call back tranquillity—restore confidence—uphold law—and invite population.

I trust that you all approach this case, conscious of the responsibility which rests upon each one of you ; that you have banished prejudice from your hearts ; that you feel a high resolve, to render life safe and property secure ; and a noble determination to rally around the institutions of your country, and preserve inviolate your laws and your constitution. You have been told that the institution of a jury, is a noble institution ; that it is the shield which protects and guards the rights of the humblest of us all ; that it is the rampart behind which the citizen may defy the attacks of arbitrary power, and the barrier raised to protect him, from the assault of lawless force. Could the gentleman have forgotten, that these individuals, whose guilt you are now called to pass upon, broke down that bulwark, and overthrew that barrier ? Could he have for-

gotten that these men usurped the authority of this tribunal, and overthrew the institutions, they themselves had aided to erect, when they said that that press should be destroyed?

Was that act lawful? Have the people of any village or city, have the people of any precinct or county, have the people of your whole State, a right to say what shall and what shall not be printed? because this is the question you are to decide. You must decide it; because, if you acquit these individuals, you admit that they were justified in the commission of this crime; and you say that a portion of the people may declare and determine what principles may be promulgated through the press, and what shall not.

Let me turn you to your Constitution, and in the 8th article of that instrument, I find that "the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty." Responsible to whom? That same instrument also tells us that "no freeman shall be imprisoned, or deprived of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, except by the judgment of his peers, or the laws of the land."

Who are a man's peers? You, as jurors! and only by you, as jurors, can a man's life, his liberty, his privileges, or property be taken away. If there are any who have constituted a different tribunal; who have established an arbitrary power; who have organized a different body, and, by force, have taken away the liberty, privilege, the property or life, of any other individual of the community, have they not usurped the province of your body, assumed the prerogative of law, and invaded the spirit and trampled upon the letter of your Constitution? You must be jealous of any invasion of your province as a jury: you must be jealous of your prerogatives; you must be jealous of any violation of your Constitution: because, if you will not, if you do not

preserve that instrument unharmed, where are your own rights ? either of life, liberty or property ? If you prove recreant to your duty ; if you are false to the trust reposed in you, where is your redress when your own rights are violated ? If you will not maintain the laws of your country, the case of Gilman yesterday, may be yours to-morrow ; and like the murdered Lovejoy, when the authorized officers of the law are unable or unwilling to protect, you may be called upon to stand up, alone and unaided, and strike one blow for the defence of your own property and rights, against the lawless attack of an armed and infuriated rabble. And the press has been destroyed, because, in the exercise of a freeman's spirit, he who was to have given energy to its powers refused to surrender any of his rights to the dictation of a band of bravos. Take care, gentlemen, lest you so act that the same body, when offended to-day by the sound of a freeman's voice, by the feelings of a freeman's heart, by the expression of a freeman's thoughts, may strike the knife to his heart, and plead your special license for riot and pillage, for arson and murder, as their best excuse and sole justification. Europe has its nominal liberty of thought and speech, without the shadow of its reality. Germany, land hallowed by the memory of her literati of former days, has given to her princes dominion over the exercise of this invaluable right. France is once more under the rule of the Goths and Vandals ; for her Council of Supervision, with their arbitrary power, not only suppress the expression of principles, in non-accordance with their creed, when found in articles designed for instruction, but also when they appertain to those lighter works intended only for the amusement of an idle hour. The governments of these countries are arbitrary ; they have established a supervision of the press, an inquisition of the mind. Tyranny suppresses all sentiments of liberty ; and the land groans, and the people turn pale under such iron despotism. But in this government, your Constitution has made pro-

vision that the press should be free and uncontrolled, has said that the free communication of thought was an invaluable right of man, and that mind should be free as the mountain breeze. Your Legislature could not restrain the operation of that instrument; could not alter or take away the rights there guaranteed. Yet a mob, an armed band of ruffians, have usurped that authority, and have said that a free communication of thought should not be allowed; that men's minds should be trammelled, if not by constitutional enactments, then by the strong arm of brute force; have said that the press should be destroyed, and that too, before it uttered one word by which its principles could have been ascertained.

The word of a mob has been almost undenied and undeniable law. With profane oaths they swore they would destroy that press; and amidst the cries of the battle field, with the shrieks of the wounded, and groans of the dying, by the light of the incendiary's torch, and over the dead bodies of their fellow citizens, they accomplished their purpose. By the blow which finished the destruction of that press did your own rights receive no wound? *The arm that was uplifted to break that press in pieces was raised to violate your Constitution.* Can you, gentlemen, as you are asked to do, sanction by your verdict the acts and the actors of that night, and to say God speed to the next violation of your rights and privileges?

Now who were concerned in these outrages? I admit that you must be satisfied, beyond a doubt, that the defendants are guilty, before you can convict them.

We have proved that the plan of destroying that press was not only long premeditated, but openly avowed.

Do you doubt the formation of such a resolution? It is written in characters no man can mistake; it is proved by evidence as plain as the existence of a noon-day sun. Bear with me while I turn your attention to that point; while I show you that the individuals

named in the indictment avowed their determination to do the act they afterwards accomplished.

The first witness to the point is West. He swears that he had a conversation with Solomon, that Solomon communicated to him the plan which had been determined upon; that he saw Beal, and had a conversation with him, in the course of which, and in reply to a request which he made, that Beal would use his influence to induce the "boys" to abandon their project, Beal said he could have no influence and would do nothing about it.

Now recollect the testimony of Mr. Krum, who tells you that Beal, while the mob were breaking up the press, said, Now boys we must stick together, and if any one is arrested we must come to his rescue. Beal had firearms by his side, and made this declaration, after the mob had accomplished the purpose for which they assembled, and which they had sworn they would do. Butler and Rock, too, stood by his side; they too were armed; and can you doubt that these persons were guilty?

Again, a company of fifteen or twenty armed men marched through your streets to Gilman's warehouse. Who were among them? Carr and Palmer addressed the Mayor when Bishop was shot. Rock, Butler, and Beal stood near, and Solomon was round, as is plainly proved by the testimony of the Mayor, Messrs. Robbins and West. Admit it is not proven that Nutter was among this company when their resolution of destroying the press was formed, or avowed. It is proved that he was apprised of the act that was to be done that night; that he left his home; that he travelled miles till he reached this city; that he was at the place of attack; and, finally, that he joined in the work of destruction. Why was he here at all? His presence is attempted to be accounted for by a story of an affair of gallantry, but the proof in the case affecting him is too strong to be overthrown by such slight pretext. If he was honest in his intentions, he, like honest old

Tray, (spoken of by the Counsel for the accused the other day, when pressing the guilt of another person,) must suffer for associating with Tiger. Whether Nutter wanted the excitement which so powerfully influenced the others, and so kept back till he thought he could safely come forward, I know not. Certain it is, however, that he participated in the work of destruction which was going on.

Then in regard to Carr, Palmer, Rock, Butler, Beal, Solomon and Nutter, is there any doubt? They declared the press should be destroyed; they attacked the building in which it was; they entered that building; the press was destroyed; and one of them is proved to have assisted in its destruction; and is it not an irresistible inference that those who swore they would, actually did destroy it? Suppose a man's life is threatened, and lost? and you know that an enemy had threatened to take it away? are you not forced to the conclusion that the man who threatened he would, in reality did take his life? Milier swears to you that Carr, surrounded by his confederates, backed up by the presence of Rock, Bruchy, Butler, Palmer, and others, told Mr. Gilman that they would have the press at the risk of their lives; and will you doubt, after this avowal of their determination, upon the very spot of the violence, who destroyed the press? or will you doubt who entered the building? or will you doubt that both acts were done with force and violence?

Gilman swears that the defenders of that property abandoned the building for fear of their lives; and yet the Attorney General has told you that there was no force used in entering the building. But suppose a man comes to my house, presents firearms to my breast, demands my property, and, to preserve my life, I retire from it; abandon its defence. Is there no force in such case? Will the gentleman say that I surrendered my property of my own free will? Gentlemen, let us turn to the testimony of Mr. Krum; and what is it? He tells you that when he first reached

the ground, he met a crowd carrying Bishop in their arms; that he asked what was the matter: that he was told one of their company was shot; that he asked their object; and that Carr said all they wanted was the press. Is there any doubt about their object? He proceeds, and says that he saw the mob breaking up the press; that he saw it thrown into the river; that Rock stood by with arms; that Beal said, "Now boys we must stick together, and if any of us are arrested we must come to the rescue."

And so with Mr. Robbins, who swears to you that these men avowed their determination to have the press at all hazards; that they had arms in their hands at the time; and that he saw some of those within the walls of the building where the press was stored.

And as it regards Solomon, although he is not proved as having been conspicuous in the attack, still he was shot; and that I hold conclusive proof that he was engaged; because, with the exception of the men who, after their capitulation, were shot at while retreating, no one was shot unless he was engaged. The evidence, gentlemen, proves conclusively, that Butler, Carr, Jennings, Beal, Rock, Palmer, Morgan, Bruchy, Solomon, Nutter and Smith, were engaged in the commission of the offences for which they have been indicted.

Now, are the jury so incredulous as to believe that unless all went in—all threw out—and all broke up the press, none are guilty? Suppose some entered the building and threw out the press; others broke it up; and others stood by, encouraging and approving the doing and the violence, are they not all guilty? Suppose one man assaults another in the street, and a third person stands by refusing to aid, preventing others from assisting the man who is assaulted; would you say that they were not *both guilty* of the offence committed?

Then when we prove to you that these individuals swore that this act should be done—and also prove that

the act was done, in the presence of these persons, some standing by encouraging those who were engaged in the work of violence, how can you help believing that all were guilty? how can you avoid returning a verdict of guilty against all?

The gentleman tells you of the danger of relying upon circumstantial evidence; and he has arrayed before you all the bugbears which he could conjure from a fertile imagination, to endeavor to deter you from relying upon the evidence which the people have brought against these men.

But we ask you to make no violent presumptions. We prove to you that these men determined this act should be done; that in pursuance of this determination they assembled together; that in the execution of their plan they assaulted the warehouse; that they forced its defenders to capitulate and fly for their lives; that these people entered the warehouse; that the press was seized by some one, and thrown out of the warehouse; that these persons destroyed it; and the gentlemen calls this evidence, such evidence as a jury cannot safely rely upon. Each fact by itself, it is true, is not sufficient to warrant you in convicting these men; but when the links are all united they form a chain of irresistible force; and all together form a conclusive whole.

You have been also informed by the Attorney General that there was no violence used, in entering this building; and because no doors were broken, you are asked to say that the first charge in the indictment falls to the ground. But I call to your recollection the declaration made by Mr. Gilman, that he left that building from fear that his life would be lost, if he remained longer. Suppose this declaration had not been made? We have proved that the windows were broken out; that the building was set on fire, and were those acts done without the application of actual force? Suppose Rock did not bring the fire which was applied

to that building ; some one else did ; Rock stood by, saw it put to the building ; encouraged the act, and was guilty of the violence used.

But it is not necessary that we should prove any actual violence ; it is sufficient if we prove a constructive force. A constructive breaking is where by fraud, by trick of any kind, any entrance into a building is effected.

A constructive breaking, is where an entrance is obtained into another's building by threats or violence to the owner's person or property ; *even though the owner should open the door, with his own hands, and let the individuals in ; provided he did so from fear of actual violence.*

I will refer you to Archibald for the law which I have now given you, p. 258 ; and Starkie, 2d, p. 320.

Now, gentlemen, apply to this law Mr. Gilman's evidence. He swears to you, that he, and those that were with him, left that building from actual fear that their lives would be destroyed if they remained ; and I ask you, whether if we have failed to prove an actual entering with force, we have not succeeded in proving *a constructive breaking, from the effect of threats and violence to this man's person or property.*

But the counsel for the accused have also said, that we have introduced no evidence that Gilman & Godfrey were the owners of the building, or the press.

It was testified to you, however, by Mr. Gilman, that he and his partner built the warehouse ; and that they still had the possession and occupancy of it, and the Court ruled that proof of possession was sufficient to support the allegation of ownership, made in the indictment.

And as to the press, the jury will recollect, that when we asked of Mr. Gilman, whether he was not liable for that press, as a bailee, the attorney general objected to the question, and argued the point, but the Court would hear no reply from the counsel for the

people, holding the law to be undeniable, that where property is alleged to be in any individual, and proof of a special property existing in the individual is offered, such proof shall be admitted, and shall be deemed sufficient evidence of the charge, which the indictment makes.

The attorney general, in his argument in defence of these men, admitted the correctness of this rule in civil cases, but denied its application to criminal charges.

You will find the law, as it is laid down in the books, in Archibald, pp. 32, and 176, which you will take with you in your retirement.

Mr. Gilman has sworn to you that Godfrey & Gilman took this property on storage ; that they paid the charges upon it ; that it was landed at, and stored in their warehouse. True it was consigned to Roff, but it never reached him ; he had neither actual nor constructive possession of it, and therefore, it could not be considered, nor have been charged as his property. Godfrey & Gilman, however, had both actual and constructive possession, and the indictment charging the press as their property is well laid. There is no denying the law I have produced ; there are no exceptions to the rules I have read ; the whole current of authority supports the position I have laid down to you. We have, therefore, proved to you that there was an unlawful and violent act done ; that these persons swore that they would do that act ; and that they assembled for the purpose of carrying their threats into execution.

With proof of these facts, do I, speaking in the name of the people, ask you to do too much, when I ask you to observe the oaths you have taken ; to regard the law and the evidence you have heard, and return a verdict of guilty ? No force in entering that building ! There was all the force which lawless violence, in the exercise of unregulated authority, under the excitement of unbridled passion could make ; there was that force which compelled the owner of that property to abandon

his castle and flee, for his life, from the hot pursuit of bravos bent upon murder. If the fire, or the powder, had actually burnt up or blown up that building, would there have been force ? and was there none because the fire which was applied did not actually consume it to ashes ?

No, gentlemen ! the people have proved all they are bound to do ; they have sustained all the allegations they have made, and having discharged the duty incumbent upon them, the counsel for the people now ask you fearlessly to perform that which is incumbent upon you. They ask you to stand up for your laws, and constitution, and put your frown upon this attempt to drown the voice of the law, by the louder uproar of an excited mob.

They ask you to believe these men guilty upon the evidence you have heard ; upon the proof before you, that a plan to destroy that press was formed ; that the place where it was stored was besieged, and attacked ; that the windows were broken ; that the building was fired ; that from fear their lives would be sacrificed, the defenders abandoned the building ; and that the press was destroyed, and destroyed by a portion of these very men ; the remainder standing by with arms in their hands, ready to assist in the work of destruction, or resist any interference, or interruption, which might be offered to the full accomplishment of their purposes. Like the bundle of twigs which, separated from each other, a child might break ; yet which when bound together, would resist a giant's strength ; so is this evidence ; separate the facts, and the proof they offer is weak and inconclusive ; unite them, and they form irresistible proof of the guilt of these individuals. Thousands of cases are found in the books, where convictions have been had upon less conclusive, less satisfactory evidence.

Why the remark, we must stick together, and, if any one is arrested, all must rally for his rescue ? What does the language mean ? Why should it have

been used? Why should the tongue of any man give utterance to such thoughts, unless he was conscious of guilt? What danger was there that these men would be arrested, unless they had committed an unlawful act? Why must they stick together, unless they were then casting about for some means of preventing the law from reaching its victims?

These are not the expressions of men conscious of innocence! No! they proceeded from one who knew he had violated the laws of his country. The conclusion to which a candid, an honest and impartial jury must irresistibly be led, is, that these misguided men, who had worked themselves up to the belief that they were about to do a meritorious act; who falsely imagined, that when this deed was done, they should have suppressed abolition, and thereby rendered good service to their country; when the whirlwind of passion had passed, when the hour for reflection had come, realized the enormity of their guilt, and resolved to trample upon other laws than those they had already violated.

I am no abolitionist. I have no sympathy for the party; no communion with their creed. But I am a friend to law; an enemy to mobs; and an advocate for good order. I am opposed to the lawless acts of an unprincipled, an infuriated, a licentious mob. I am opposed to any resort to brute force, much more when it is resorted to to break down the barriers which the constitution has thrown around us all. Put down the freedom of thought! suppress the freedom of speech! restrain the freedom of the press! Lawless force cannot do it. The effort will be useless; the trial will be as idle, as was that when Canute the Dane planted his chair upon the sea shore, and commanded the waves to roll back from their appointed place. That effort was idle; but not more so than this one. The press still speaks out in tones of thunder, and it will speak out in tones that cannot be resisted, and in a language which cannot be misunderstood or disregarded. You cannot put down the press by force. I warn you; I warn all

against such inconsiderate acts. Let abolitionists think if they please ; let them speak if they choose ; let them print if they will. Freedom of thought is the birthright, and freedom of speech the charter of every American citizen. Let him use his privileges, let him exercise his rights, "responsible to his peers and the law of the land."

This verdict will determine, for weal or for wo, the fate of this community. If lawless violence can be restrained ; if it is ascertained that mobs shall not rule over us ; if it is determined that licentiousness shall not prevail ; that crime shall not be legalized among us, then all will be well ; but, if the verdict of this jury is to sanction the deeds of violence and murder which have disgraced this city, then who will stay, or who come among us ?

Remember that the eyes of this community, of the whole country are upon you ; that the record of this trial will go to the world, and that upon yourselves it depends whether you are honored through coming ages as men, who, in an hour not without its danger, fearlessly asserted the prerogatives of law, or whether your names shall go down to all after time, as fixed figures for the hand of scorn to point his unerring finger at. I have an unyielding hope, an unshaken confidence that this jury will apply the law and the evidence as it should be applied. I have a firm belief that you will act well your duty to yourselves, your country, and your God ; and that you will, so far as in you lies, remove the stain which now rests upon this community.

I throw the responsibility upon you ; I have faithfully laid before you the law and the testimony ; I have discharged with what ability I ought, the duty which devolved upon me ; I wash my hands of the consequences ; I throw from my shoulders the weight of responsibility which has rested till now upon them, and I lay it where the law has placed it, upon your heads. In your hands is the fate of the accused ; the cause of

good order ; the interests of society ; and the maintenance of the laws.

The Jury retired, and after waiting about an hour, the court adjourned ; previously instructing the officer not to permit the jurors to separate unless they should agree upon a verdict. If they should agree during the evening, the verdict was to be sealed and placed in the hands of the clerk.

January 20th.

The Court met pursuant to adjournment, at 9 o'clock this morning. The jurors answered to their names as they were called.

The verdict of the jury (which had been given to the clerk the night before sealed) was declared to be, "Not Guilty," by Alexander Botkin, Foreman.

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NOW IN PREPARATION,
AND WILL SHORTLY BE PUT TO PRESS,
TWELVE MONTHS IN ALTON,

Including a brief history of the City ; the establishment of the Alton Observer ; the first, second, third and fourth destruction of the Press by a Mob ; and the death of the Rev. E. P. LOVEJOY ; with Views of the City, *and the position of the Warehouse of Messrs. Godfrey, Gilman & Co., from which the Press was taken.*

BY JOHN S. CLARK.